

# 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 HOUSING FINANCE BOARD

### 12 CFR Part 951

[No. 2008-09]

RIN 3069-AB35

### 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 Affordable Housing Program (AHP) regulation to authorize the Federal Home Loan Banks (Banks) to establish AHP homeownership set-aside programs for the purpose of refinancing or restructuring eligible households' nontraditional or subprime owner-occupied mortgage loans. The new authority would expire on June 30, 2011.

**DATES:** The Finance Board will accept written comments on this proposed rule that are received on or before June 16, 2008.

**ADDRESSES:** Submit comments by any of the following methods:

*E-mail:* [comments@fhfb.gov](mailto:comments@fhfb.gov).

*Fax:* 202-408-2580.

*Mail/Hand Delivery:* Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, **ATTENTION:** Public Comments.

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at [comments@fhfb.gov](mailto:comments@fhfb.gov) to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Rule: Affordable Housing Program Amendments. RIN Number 3069-AB35. Docket Number 2008-09.

We will post all public comments we receive on this rule without change,

including any personal information you provide, such as your name and address, on the Finance Board Web site at: <http://www.fhfb.gov/Default.aspx?Page=93&Top=93>.

#### FOR FURTHER INFORMATION CONTACT:

Karen Walter, Associate Director, Office of Supervision, by electronic mail at [walterk@fhfb.gov](mailto:walterk@fhfb.gov) or by telephone at 202-408-2829; Charles E. McLean, Associate Director, Office of Supervision, by electronic mail at [mcleanc@fhfb.gov](mailto:mcleanc@fhfb.gov) or by telephone at 202-408-2537; Melissa L. Allen, Senior Program Analyst, Office of Supervision, by electronic mail at [allenm@fhfb.gov](mailto:allenm@fhfb.gov) or by telephone at 202-408-2524; or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, by electronic mail at [likes@fhfb.gov](mailto:likes@fhfb.gov) or by telephone at 202-408-2930. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. Statutory and Regulatory Background

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish an affordable housing program, the purpose of which is to enable a Bank's members to finance homeownership by households with incomes at or below 80 percent of the area median income (low- or moderate-income households), and to finance the purchase, construction or rehabilitation of rental projects in which at least 20 percent of the units will be occupied by and affordable for households earning 50 percent or less of the area median income (very low-income households). See 12 U.S.C. 1430(j)(1) and (2). The Bank Act requires each Bank to contribute 10 percent of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 12 Banks of \$100 million. See 12 U.S.C. 1430(j)(5)(C).

The Finance Board has promulgated a regulation implementing these provisions of the Bank Act, which is codified at 12 CFR part 951. The AHP regulation requires that each Bank establish a competitive application program under which the Bank's members may apply for AHP subsidies pursuant to eligibility requirements and scoring criteria set forth in the regulation and implemented through

Bank policies. See 12 CFR 951.5. In addition, the AHP regulation authorizes a Bank, in its discretion, to set aside a portion of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low- or moderate-income households. See 12 CFR 951.6. Under the homeownership set-aside programs, AHP direct subsidy (grants) may be provided to members to pay for down payment assistance, closing costs, and counseling costs in connection with a household's purchase of its primary residence, and for rehabilitation assistance in connection with a household's rehabilitation of an owner-occupied residence. See 12 CFR 951.6(c)(4). The Finance Board periodically has increased the Banks' maximum allowable homeownership set-aside allocation. Currently, as established in amendments to the AHP regulation effective January 1, 2007, a Bank may allocate up to the greater of \$4.5 million or 35 percent of its annual required AHP contribution to homeownership set-aside programs in that year, provided that at least one-third of the Bank's annual set-aside allocation is targeted to first-time homebuyers. See 12 CFR 951.2(b)(2).

From 1990 to 2007, the Banks awarded approximately \$3.27 billion in AHP subsidy under both the competitive application and homeownership set-aside programs. The Banks awarded \$2.97 billion of this amount through the competitive application program, assisting more than 556,000 units of owner-occupied and rental housing. The Banks' homeownership set-aside programs have provided more than \$297 million to assist households, most of which were first-time homebuyers, to purchase and rehabilitate 67,103 owner-occupied units. In 2007, the Banks awarded AHP subsidy through their homeownership set-aside programs to over 9,200 low- or moderate-income households to purchase or rehabilitate their primary residences.

##### B. Subprime Mortgage Crisis

Current distress in the owner-occupied housing market has made it difficult for many low- and moderate-income households to sustain homeownership, particularly those with homes financed with subprime

adjustable-rate mortgages (ARMs) or nontraditional mortgage products. For these households, the interest rates on their subprime ARMs or the principal and interest payments on their nontraditional mortgages have increased substantially or will do so in the near future.<sup>1</sup> About 1.5 million subprime ARMs are scheduled to reset upward in 2008.<sup>2</sup> After these mortgages reset, many low- and moderate-income households will experience an unaffordable increase in their mortgage payments. Many of these low- and moderate-income households are not able to sustain homeownership without a reduction in their monthly mortgage payments. Many of these households also cannot sell their homes or refinance into more affordable mortgages because declines in home values have left them without sufficient equity to qualify for new mortgages. The resulting payment shocks, high housing-cost-to-income ratios, and the inability to refinance have already led, and will likely continue to lead, to foreclosures in many cases. More than 20 percent of the roughly 3.6 million subprime ARMs outstanding at the end of 2007 either were in foreclosure or 90 days or more past due.<sup>3</sup>

The problem is compounded by the fact that subprime and nontraditional mortgages are often concentrated geographically.<sup>4</sup> Experts believe that a

<sup>1</sup> Subprime ARMs include, for example, “2/28” and “3/27” loans, in which the household pays an introductory, often a low “teaser” interest rate, fixed for the first two or three years, after which the rate becomes adjustable, usually on an annual basis. Principal and interest payments increase because they are typically “recast” on two common types of nontraditional loans: Interest-only loans and option ARMs. For an interest-only loan, the household pays only interest for a specified period, e.g., five years. Payments are then recast to include the loan’s principal, which is amortized over the remaining term of the loan. With an option ARM, the household has the monthly option of paying less than the fully amortizing principal and interest payment, and it may pay as little as a minimum payment that includes no principal and less than the full amount of interest. Unpaid interest is added to the loan balance resulting in “negative amortization.” In most option ARMs, the lender recasts the payment to re-amortize the increased principal and interest either periodically, e.g., every 5 years, or whenever the negative amortization reaches a specified cap, typically 125% of the original loan amount. Nontraditional loans may have adjustable interest rates, which can compound the increase in the amount of the monthly payments and the amount of negative amortization.

<sup>2</sup> Speech by Ben S. Bernanke, Chairman, Federal Reserve Board, “Fostering Sustainable Homeownership,” at the National Community Reinvestment Coalition Annual Meeting, Washington DC (March 14, 2008) (Bernanke Speech).

<sup>3</sup> See Bernanke Speech.

<sup>4</sup> “Subprime Lending and Alternative Financial Service Providers: A Literature Review and Empirical Analysis,” U.S. Department of Housing and Urban Development (March 2006).

higher than average number of foreclosures and unoccupied homes in a community adversely affect the home values and quality of life of other homeowners in the same neighborhood. In a March 2008 speech, the Chairman of the Federal Reserve Board stated that one in five outstanding subprime ARMs is seriously delinquent and that clusters of foreclosures may destabilize neighborhoods.<sup>5</sup> The same conclusion was reached by a Homeownership Preservation Foundation study, coauthored by former Federal Housing Administration (FHA) Commissioner William C. Apgar<sup>6</sup> and by the Federal Reserve Bank of Chicago,<sup>7</sup> which found that boarded-up houses and empty lots can decrease the values of homes in the same vicinity. The Center for Responsible Lending has estimated that the values of millions of homes not financed with subprime or nontraditional loans will be adversely affected by foreclosures resulting from subprime and nontraditional mortgages that are no longer affordable.<sup>8</sup>

#### C. Bank Actions To Address Crisis

A number of the Banks have instituted special Community Investment Program (CIP) advances to provide member banks and thrifts with lower-cost funds to refinance households into long-term, fixed-rate mortgages under existing statutory and regulatory authority. See 12 U.S.C. 1430(i); 12 CFR part 952. The Banks offer CIP advances at their cost of funds with either a small or no mark-up for administrative costs, and thus provide members with a way to fund long-term, fixed-rate mortgages at a somewhat lower cost than regular advances or other sources of funds. However, to date, member demand for these CIP advances has been limited, largely due to the fact that households that need to refinance often have difficulty qualifying for a new mortgage when their homes are devalued or their housing debt ratios are high.

The Finance Board is considering other options for how the Banks could assist households faced with unaffordable mortgage payments due to interest-rate increases or payment recasts in their subprime and

nontraditional mortgages. Specifically, pursuant to a request by the Federal Home Loan Bank of San Francisco (San Francisco Bank) on January 15, 2008, the Finance Board, through Resolution Number 2008–01, approved waivers of certain homeownership set-aside program provisions of the AHP regulation to allow the San Francisco Bank to establish a temporary pilot program to provide AHP direct subsidy to enable a household with a subprime or nontraditional loan held by a San Francisco Bank member to refinance or restructure that loan into an affordable, long-term fixed-rate mortgage. The purpose of the pilot program is to provide households with stable mortgage payments for the life of the mortgage. Members receiving AHP subsidy must refinance or restructure existing mortgages so the resulting mortgages are fixed-rate, fully amortizing first mortgages with a term of at least 30 years. Members also must match the amount of AHP direct subsidy to each household on a two-to-one basis. The authority will expire on December 31, 2009. The Bank’s submission raised a legal issue as to the permissible uses of AHP subsidy under the Bank Act; *i.e.*, whether the subsidy could be used to pay costs associated with the refinancing or restructuring of an existing mortgage loan to an otherwise AHP-eligible household. The legal issue is discussed in the Legal Authority section below.

#### D. Legal Authority

Section 10(j) of the Bank Act requires each Bank to establish, pursuant to Finance Board regulations, an affordable housing program to subsidize the interest rates on advances to members engaged in lending for long-term low- or moderate-income owner-occupied and affordable rental housing at subsidized interest rates. The Bank Act further provides that Finance Board regulations must permit Bank members to use AHP advances to: (A) Finance homeownership by families with incomes at or below 80 percent of the median income for the area; or (B) finance the purchase, construction, or rehabilitation of rental housing in which at least 20 percent of the units are for and occupied by households with incomes at or below 50 percent of the median income for the area. 12 U.S.C. 1430(j)(1) and (2). When Congress first enacted these provisions, the accompanying Conference Committee Report<sup>9</sup> included language regarding

<sup>5</sup> See Bernanke Speech.

<sup>6</sup> “The Municipal Costs of Foreclosures: A Chicago Case Study,” Housing Finance Policy Research Paper Number 2005–1, Homeownership Preservation Foundation (February 27, 2005).

<sup>7</sup> Hatcher, Desiree, “Foreclosure Alternatives: A Case for Preserving Homeownership,” Profitwise News and Views, Federal Reserve Bank of Chicago (February 2006).

<sup>8</sup> “The Impact of Court-Supervised Modification of Subprime Foreclosures,” Center for Responsible Lending (February 25, 2008).

<sup>9</sup> See H.R. Conf. Rep. No. 101–222, 101st Cong., 1st Sess. (1989) (accompanying the Financial

the permissible use of AHP subsidy on which the Finance Board has long relied in construing the Bank Act to limit permissible AHP uses to the purchase, construction, or rehabilitation of affordable housing.<sup>10</sup>

The Finance Board's implementing AHP regulation does not expressly address the use of AHP subsidy to assist members in refinancing or restructuring mortgage loans to otherwise eligible households, although it does implicitly bar such use by not explicitly including loan refinancing or restructuring among the permissible uses. For example, section 951.6(c)(4) establishes the permissible uses of AHP direct subsidy under the homeownership set-aside program, providing that AHP subsidy may be used for down payment, closing cost, counseling, or rehabilitation assistance in connection with a household's purchase or rehabilitation of an owner-occupied unit. 12 CFR 951.6(c)(4). Similarly, section 951.5(c)(1) establishes the permissible uses of AHP subsidy under the competitive application program, providing that the AHP subsidy may be used exclusively for the purchase, construction or rehabilitation of eligible owner-occupied or rental housing projects. Each of these regulatory provisions reflects a long-standing Finance Board interpretation of section 10(j)(2) of the Bank Act that AHP subsidy may be used only for the purchase, construction, or rehabilitation of affordable housing.<sup>11</sup>

Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)).

<sup>10</sup> See 62 FR 41812, 41819 (Aug. 4, 1997) (citing 12 U.S.C. 1430(j)(2) in support of statement that use of AHP subsidies for refinancing would be prohibited by the Bank Act). The relevant Conference Committee Report language on which the Finance Board relied provided as follows:

The House bill directed each Bank to establish a program to subsidize interest rates on advances to member institutions that make loans for long-term affordable low- and moderate-income housing at subsidized interest rates. The House bill required each member institution receiving advances under the program to report to the Bank on the use of program advances. The conference report contains the House bill with an amendment that provides standards that limit subsidized advances to (1) loans to finance homeownership purchases or rehabilitation by families with incomes at or below 80% of the median; and (2) to finance the purchase, construction or rehabilitation of rental housing in which at least 20% of the units will be occupied by and affordable for very low income households for the remaining useful life of the property or the mortgage term. See H.R. Conf. Rep. at 430–31.

<sup>11</sup> Notwithstanding that long-standing interpretation, the Finance Board has permitted the use of AHP subsidy to refinance loans in certain narrow circumstances. Thus, section 951.5(c)(8) allows a project to use AHP subsidy under the competitive application program to refinance an existing mortgage loan so long as the transaction produces equity proceeds and those proceeds—up to the amount of the AHP subsidy in the project—

On January 15, 2008, the Finance Board approved a request from the San Francisco Bank to waive certain provisions of the AHP regulation to permit the use of AHP subsidy to assist certain otherwise eligible households to refinance or restructure their existing residential mortgage loans. See Resolution No. 2008–01 (Jan. 15, 2008). The waiver also permitted the San Francisco Bank to use AHP subsidy to pay for homeownership or credit counseling costs incurred in connection with the loan refinancing or restructuring. That submission raised a legal issue as to the permissible uses of AHP subsidy under the Bank Act, *i.e.*, whether the subsidy could be used to pay costs associated with the refinancing or restructuring of an existing mortgage loan to an otherwise AHP-eligible household. In granting the waiver, the Finance Board considered the relevant statutory language, its legislative history, and the Finance Board's prior interpretations and concluded that the Bank Act does not direct the Finance Board to confine the use of AHP subsidy exclusively to the purchase, construction, or rehabilitation of affordable housing. Because the use of AHP subsidy to assist members of the San Francisco Bank in refinancing or restructuring mortgage loans represented a departure from past practice, however, the Finance Board committed to undertaking a rulemaking in order to consider whether it should amend its regulations to permit all of the Banks to use AHP subsidy for this purpose.

The Finance Board believes that it has the legal authority to amend its regulations to permit the Banks to use AHP subsidy to pay for costs associated with refinancing or restructuring existing mortgage loans, which costs may include homeownership or credit counseling costs incurred in connection with the transaction. In reaching that conclusion, the Finance Board has looked to the whole of section 10(j) of the Bank Act, which deals exclusively with the AHP, for guidance. As described previously, section 10(j) does not expressly prohibit (or otherwise address) the use of AHP subsidy to

are used for the purchase, construction, or rehabilitation of eligible housing units. 12 CFR 951.5(c)(8). In a similar fashion, sections 951.5(c)(7) and 951.6(c)(8) permit the use of AHP subsidy to pay for counseling costs, but only where those costs are incurred in connection with a household's actual purchase of an AHP-assisted unit. See 12 CFR 951.5(c)(7) and 951.6(c)(8). These provisions reflect an earlier interpretation that counseling costs may qualify as "financing homeownership" under section 10(j)(2)(A) of the Bank Act if they are linked to the authorized use of purchasing a unit with AHP assistance.

refinance or restructure mortgage loans. Section 10(j)(2) does establish general standards for the AHP, by requiring Finance Board regulations to allow members to use AHP subsidy to "finance homeownership" and to "finance the purchase, construction, or rehabilitation" of rental housing. Although the Finance Board has construed this provision narrowly, the Bank Act's language is in fact permissive in nature and can be construed more broadly than has been done in the past. Similarly, although there are multiple references elsewhere in section 10(j) to the purchase, construction, or rehabilitation of affordable housing that could be read to suggest a congressional intent to confine the permissible uses of the AHP subsidy to those purposes, the Finance Board believes that the Bank Act does not compel one to reach that conclusion. For example, the references in section 10(j)(3) to purchase or rehabilitation appear in the context of language that establishes certain priorities for those uses of the AHP funds, which suggests that there must be other eligible, but subordinate, uses. Arguably, that provision could mean simply that purchase and rehabilitation are to be given priority over construction of affordable housing, as that is the one other clearly specified use. In the Finance Board's view, however, the language used in establishing this priority for purchase and rehabilitation also can be read to mean that Congress contemplated that there could be other permissible uses over which purchase and rehabilitation would have priority.

Indeed, it appears clear that Congress, by enacting section 10(j)(9)(A), contemplated that the Finance Board could create other permissible uses for the AHP subsidy. That provision explicitly directs the Finance Board to adopt regulations that "specify activities eligible to receive subsidized advances from the Banks under this program." 12 U.S.C. 1430(j)(9)(A). The fact that Congress expressly has delegated to the Finance Board the authority to specify activities that may be eligible to receive AHP subsidy is compelling evidence that the universe of potentially eligible AHP activities need not, as a matter of law, be confined to the purchase, construction, or rehabilitation of affordable housing, the three uses expressly identified in section 10(j)(2)(B). If those were the only legally permissible uses for the AHP subsidy, Congress likely would not have authorized the Finance Board to adopt regulations specifying the eligible AHP

activities, as was done in section 10(j)(9)(A).

In reading these several provisions of the Bank Act as a whole, the Finance Board has concluded that although Congress has mandated that the regulations must permit the use of AHP subsidy for the purposes specified in section 10(j)(2), *i.e.*, to finance homeownership, or the purchase, construction, or rehabilitation of affordable rental housing, it also has granted to the Finance Board the authority to specify other eligible affordable housing activities. Because Congress has left open the possibility for the Finance Board to designate additional affordable housing activities that may be eligible for AHP subsidy, and because Congress has not expressly addressed loan refinancing or restructuring anywhere within section 10(j), the Finance Board believes that the Bank Act does not require the AHP regulation to prohibit (either expressly or by implication) the use of AHP subsidy to refinance or restructure existing owner-occupied mortgage loans, or to pay for homeownership or credit counseling costs incurred in connection with such transactions. Accordingly, the Finance Board believes that it has the authority under section 10(j)(9)(A) to amend the AHP regulation to allow the use of AHP subsidy for owner-occupied loan refinancing or restructuring, and is issuing this proposed rule to aid it in determining whether, as a policy matter, it should adopt a final rule to that effect and, if it were to do so, what limitations might be appropriate.<sup>12</sup>

#### *E. Proposed New Loan Refinancing or Restructuring Authority*

In proposing the amendments to the AHP regulation, the Finance Board would temporarily extend the authority to use AHP direct subsidy to refinance or restructure mortgages to all of the Banks. The Finance Board has based the requirements of the proposed rule generally on the refinancing or restructuring set-aside program as authorized for the San Francisco Bank

in Resolution Number 2008-01. The specific requirements in the proposed rule are discussed in the Analysis of Proposed Rule section below.

The Finance Board requests comment on whether it generally is appropriate for the AHP to provide subsidies for refinancing or restructuring existing owner-occupied mortgage loans. The Finance Board also requests comment on whether the use of AHP subsidy for such loan refinancing or restructuring should be limited to specific circumstances, such as for assisting low- and moderate-income households with subprime or nontraditional mortgages that are at risk of losing their homes due to unaffordable increased monthly payments after interest rate resets or principal-and-interest payment recasts. In addition, the Finance Board seeks comment on other ways in which AHP direct subsidy might be used to assist households at risk of foreclosure because of increasing monthly payments due to interest-rate increases or payment recasts of principal and interest.

The proposed rule would authorize a Bank to establish a program targeted to refinancing or restructuring existing subprime and nontraditional loans held by members or their affiliates. The Finance Board requests comment on whether the program authority should be extended to assist households with subprime and nontraditional mortgages that are held by lenders that are not affiliated with the member or mortgages that collateralize mortgage-backed securities (nonaffiliated lenders), and, if so, whether the lender should be obligated to reduce the loan principal, waive fees, or otherwise contribute to the assistance being provided to the homeowner. Currently, the AHP regulation permits members to access AHP direct subsidy to provide down payment and closing cost assistance to households purchasing a home, regardless of whether the household is financing the purchase with the member providing the assistance, with another member, or with a nonaffiliated lender. A Bank, in its discretion, may require a member to make the mortgage on the assisted home purchase.

Under the proposed rule, a member using AHP subsidy to refinance or restructure its own or an affiliate's loan would have to pay, directly or indirectly, an amount equal to at least two times the amount of AHP subsidy toward eligible uses of the subsidy. Moreover, the proposed rule would prohibit members from charging certain costs associated with refinancing, such as prepayment penalties and fees. The same requirement could be difficult to impose upon a nonaffiliated lender as a

condition of the household receiving AHP direct subsidy, especially where the mortgage is included in a pool collateralizing a mortgage-backed security. Consequently, the lender could be relieved of a problem loan without any financial consequences. At the same time, households with loans that are not held in portfolio by financial institutions have few options and little flexibility for working out or restructuring their mortgages. Such households may be in greater need of assistance than households that can work directly as customers with the local depository institutions that hold their loans.

The Finance Board requests comment on whether, if the AHP subsidy could be used to assist households to refinance loans held by nonaffiliated lenders, there should still be prohibitions on certain uses of AHP subsidy, for example, for prepayment penalties and pay-off fees to the nonaffiliated lender. If the AHP could not be used to pay prepayment penalties and pay-off fees to nonaffiliated lenders, then the Finance Board requests comment on how a household would pay such costs in order to refinance its mortgage.

In considering the use of AHP subsidy to refinance eligible households with loans held by nonaffiliated lenders rather than members, the Finance Board also requests comment on how else the subsidy could be used to assist households. For example, many households with subprime and nontraditional loans cannot refinance into lower-cost, 30-year fixed-rate mortgages because the values of their homes declined and the households no longer have sufficient equity to qualify, or because the household's loan payments would exceed the maximum debt-to-income ratios of the new lender. The Finance Board requests comment on whether AHP direct subsidy should be used to pay down principal or to provide equity, similar to down payment assistance, in order to allow the household to qualify for a new loan from a member or another entity, especially from federal, state, and local government entities with programs specifically targeted to refinancing subprime and nontraditional mortgages such as FHA Secure, and state or local bond programs. For example, if a household did not have the necessary 3 percent equity to qualify to refinance with an FHA or FHA Secure mortgage with a maximum loan-to-value ratio of 97 percent, then the AHP subsidy could be used to reduce the principal in order to achieve the qualifying loan-to-value ratio. Alternatively, the AHP subsidy could be used to reduce the principal

<sup>12</sup> In this regard, the Finance Board is mindful of the previously-quoted Conference Committee Report and the extent to which it may have relied on that language in determining to exclude loan refinancing or restructuring from the list of eligible uses for AHP subsidy. Nonetheless, because Congress also delegated to the Finance Board the authority to specify additional permissible uses for the AHP subsidy, the Finance Board believes that it must give precedence to the language that Congress used in the statute, rather than the language of the Conference Committee Report. Thus, the Finance Board does not believe that the Conference Committee Report precludes it from exercising the authority to establish additional permissible uses for the AHP subsidy.

amount of the loan to a level that would result in monthly payments that would meet the lender's underwriting ratios for household debt and expenses. Such an approach has the benefit of leveraging and enhancing refinancing initiatives by the U.S. Department of Housing and Urban Development (HUD) and state and local housing finance agencies aimed at preventing foreclosures and helping to stabilize communities. The Finance Board requests comment on how AHP subsidy could be used in conjunction with federal, state, and local programs designed to assist households in refinancing subprime and nontraditional mortgages.

As discussed earlier, extensive foreclosures and vacant properties can have an adverse effect on a community. The impact of preventing multiple foreclosures concentrated in one community may be greater than that of preventing the same number of foreclosures spread across multiple communities. Because of the nature of the housing problems that have given rise to the Finance Board proposing to allow the temporary use of AHP direct subsidy for refinancing or restructuring existing mortgages, the Finance Board requests comment on whether such refinancing or restructuring assistance should be targeted to households located within neighborhoods and communities that may be at higher risk for defaults and foreclosures. Given the concentration of subprime and nontraditional mortgage products in many low- or moderate-income communities, it may be possible to help the households that are affected directly by unaffordable mortgage payments while indirectly assisting their neighbors by mitigating the negative spillover effects of foreclosures. Many of these neighborhoods are served by community-based organizations that are participating in homeownership and foreclosure prevention counseling programs and have been certified by HUD and the National Foreclosure Mitigation Counseling Program.

Many such community-based organizations serve well-defined areas, have knowledge of the local housing structure and market, have expertise in financing resources and requirements, and currently have counseling relationships with households at risk of foreclosure. These organizations routinely help households obtain the necessary combinations of subsidies and long-term, fixed-rate financing in order to purchase and rehabilitate homes and prevent the loss of their homes. The Finance Board requests comment on whether members should be able to apply for AHP direct subsidies under a

refinancing set-aside program on behalf of community-based organizations, rather than households directly, and whether doing so could facilitate the use of AHP subsidy to help stabilize communities that are weakened by higher rates of foreclosures.

The Finance Board intends to publish a comprehensive final rule that incorporates reasonable and appropriate suggestions from commenters. At the same time, the Finance Board recognizes that there may be other ways in which to refinance at-risk households, which are not covered in the specific proposed rule or in this discussion and may not be raised by commenters. The Finance Board requests comment on whether a final rule should include a provision allowing a Bank to apply to the Finance Board for prior approval to establish an AHP refinancing program not covered by a final rule.

## II. Analysis of Proposed Rule

### A. Loan Refinancing or Restructuring Programs: Proposed Section 951.6(f)(1)

#### 1. General

The proposed rule would add a new paragraph (f) under the existing homeownership set-aside program provisions of section 951.6 of the AHP regulation, which would authorize a Bank, in its discretion, to establish one or more homeownership set-aside programs for the use of AHP direct subsidy by its members to refinance or restructure eligible households' nontraditional or subprime mortgage loans. As a general proposition, the Finance Board is proposing that any new program must comply with the existing requirements in section 951.6, except for certain specified provisions, as well as with the requirements of part 951. Thus, the existing provisions in section 951.6 governing eligible member applicants, member allocation criteria, household income eligibility, Bank discretionary authority to adopt additional household eligibility requirements, maximum subsidy per household, five-year retention agreements, financial or other concessions, financing costs, de minimis cash backs, application approvals, funding procedures, reservation of subsidies, and progress towards use of the subsidy, all would apply to a Bank's loan refinancing or restructuring program. See 12 CFR 951.6(b), (c)(1), (c)(2)(i), (c)(2)(iii), (c)(3), (c)(5)–(c)(7), (c)(9), (d), and (e). Similarly, a Bank's loan refinancing or restructuring program must otherwise meet the requirements of part 951, including the monitoring, recapture and

agreements provisions in sections 951.7, 951.8, and 951.9, respectively. The proposal also provides, however, that the requirements in section 951.6(c)(2)(ii), (c)(4), and (c)(8) do not apply to the new programs, nor does the provision of section 951.6(c)(2)(iii) that relates to first-time homebuyers.<sup>13</sup>

#### 2. Funding Allocation

A Bank's loan refinancing or restructuring program, as a homeownership set-aside program under section 951.6, would be subject to the maximum funding allocation limits applicable to set-aside programs under existing section 951.2(b)(2). Thus, under section 951.2(b)(2), a Bank, in its discretion, may set aside annually, in the aggregate, up to the greater of \$4.5 million or 35 percent of the Bank's annual required AHP contribution to provide funds to members participating in all homeownership set-aside programs, including loan refinancing or restructuring programs established by the Bank, provided that at least one-third of the Bank's aggregate annual set-aside allocation to such programs is targeted to assist first-time homebuyers.<sup>14</sup> In maintaining the one-third allocation requirement for first-time homebuyers, the proposed rule ensures that the Bank continues to provide assistance to low- and moderate-income first-time homebuyers. The Finance Board requests comment on whether the rule should continue to require that a Bank using its set-aside authority under proposed new paragraph (f) meet the first-time homebuyer requirement. Alternatively, the Finance Board seeks comment on whether the amount of a Bank's allocation to its refinancing or restructuring program should be excluded from the total set-aside allocation prior to calculating the one-third requirement for assistance to first-time homebuyers.

The Finance Board also requests comment on whether to permit a Bank to allocate to a refinancing or restructuring program, as proposed, a portion of its annual AHP contribution in excess of the maximum permitted for

<sup>13</sup> Existing section 951.6(c)(4) sets forth the eligible uses of AHP subsidy under a Bank's homeownership set-aside program, which do not include loan refinancing or restructuring. 12 CFR 951.6(c)(4). Existing section 951.6(c)(8) provides that AHP set-aside subsidies may be used to pay for counseling costs only where the costs are incurred in connection with a homebuyer's purchase of an AHP-assisted unit. See 12 CFR 951.6(c)(8).

<sup>14</sup> See 12 CFR 951.2(b)(2). A Bank also may allot to its current year's AHP from its annual required AHP contribution for the subsequent year, an amount up to the greater of \$2 million or 20 percent of its annual required AHP contribution for the current year. 12 CFR 951.2(b)(3).

allocation to the homeownership set-aside programs. Doing so would decrease the amount of the Bank's annual AHP contribution that would be available to projects, including rental projects, which access the program through the competitive application process and serve other housing needs of very low- and low- or moderate-income households. At the same time, the scope of the current need for refinancing or restructuring of subprime and nontraditional mortgages may justify such an increase in the allocation.

*B. Definitions: Proposed Section 951.6(f)(2)*

Proposed paragraph (f)(2) would add two new definitions of terms related to the loan refinancing or restructuring authority as used in paragraph (f). The proposed definitions are discussed below in the context of specific regulatory requirements.

*C. Member Allocation Criteria: Proposed Section 951.6(f)(3)*

Proposed paragraph (f)(3) would require that if a Bank opts to allocate AHP subsidy under its loan refinancing or restructuring program through a procedure in which members reserve upfront allocations prior to enrolling households, rather than one in which members reserve AHP subsidy as they enroll individual households, the Bank must establish a period of time during which all members may apply for the subsidy. At the end of that period, the Bank must determine the amount of the AHP subsidy it will reserve for each participating member, based on the number and amount of member requests, a member's capacity to perform under the terms of the program, and the amount of AHP direct subsidy available.

Currently, some Banks use the upfront member reservation procedure, while other Banks use the member reservation upon household enrollment procedure in allocating AHP subsidy to members. The standards in the proposed rule for the upfront member reservation procedure are intended to ensure that the funds are reserved in a fair and equitable manner and that a Bank does not favor particular members by allowing them to reserve access to the program upfront on a member first-come, first-served basis to the exclusion of other members. This is because, under the proposed program, members are already holding the loans that they will refinance or restructure and can estimate demand, while, under the homeownership set-aside program for down payment or rehabilitation

assistance, members do not know what the demand will be. Typically, under those homeownership set-aside programs, if a member reserves an upfront allocation, even on a member first-come, first-served basis, and does not commit its entire reserved subsidy by a certain date, the amount reverts to the pool which the Bank makes available for other members. Under the proposed program, however, a member will know that it can refinance or restructure enough loans in its portfolio to use up its entire reservation, thus, the first members to reserve funds on a member first-come, first-served basis would effectively exclude all other members from access to the program. Consequently, the proposed rule would require that, if a Bank chooses to permit members to reserve upfront allocations of AHP funds, the Bank may not do so on a member first-come, first-served basis, but must do so by determining the demand by all interested members and allocating the funds fairly and equitably based on the estimates of individual members' need for funding and the amount of subsidy available.

*D. Household Access and Notification: Proposed Section 951.6(f)(4)*

Proposed paragraph (f)(4)(ii) would require that members participating in a Bank's loan refinancing or restructuring program make the AHP direct subsidy available to eligible households on a first-come, first-served basis. This is consistent with the implementation of the homeownership set-aside program when AHP subsidy is used for purchase or rehabilitation assistance. This requirement is specified in the proposed rule to ensure that the member does not select those loans in its portfolio that would most benefit the member if they were refinanced or restructured with AHP assistance.

Consequently, proposed paragraph (f)(4)(i) would require participating members to inform all mortgage loan customers of the availability of AHP direct subsidy under the program to assist in such loan refinancing or restructuring, in order to ensure that potentially eligible households are aware of the program and can independently seek assistance from the member. The member could do so by including a notification in regular mailings or statements to its mortgage customers, or by posting the information prominently on its Web site.

*E. Eligible Loans: Proposed Section 951.6(f)(5)*

Proposed paragraph (f)(5) would provide that a loan is eligible to be refinanced or restructured with AHP

direct subsidy if it meets all of the requirements discussed below.

(i) *Member or affiliate loan.* Under the proposed rule, the loan refinancing or restructuring program must be limited to loans originated and/or held by Bank members or their affiliates. One reason for including this limitation is that it allows the Bank to require a member to contribute its own funds or other resources as a condition to receiving the AHP subsidy. Nonetheless, the Finance Board requests comment on whether it is appropriate to provide AHP subsidy to such members because doing so also could be perceived as using AHP subsidy to mitigate the losses of members that made or purchased the nontraditional or subprime loans.

As in Section I.E., above, the Finance Board also requests comment on whether it would be appropriate to allow a member to use AHP subsidy to refinance owner-occupied mortgage loans that are held by other entities. Such a situation could arise, for example, if a household were to apply to a member to refinance a mortgage that is held by a third party, such as another financial institution or an issuer of mortgage-backed securities. In that case, although the household would benefit from the AHP subsidy by obtaining an affordable loan, the refinancing would also benefit the entity holding the loan by removing an "at risk" loan from its books without having any obligation to pay for or otherwise absorb any of the costs of the refinancing. Many of these third-party lenders or loan servicers for mortgages that have been sold into the secondary market may not have the same obligation or incentive to renegotiate their loans or forego any increase in the interest rate on their loans, as would a member that holds these loans in portfolio.

In approving the waiver for the San Francisco Bank, the Finance Board accepted the requirement that the members participating in the program also must contribute to the costs of the refinancing, and has retained that approach in the proposed rule. Nevertheless, before adopting a final rule that would retain that restriction, the Finance Board believes that it should solicit public comment on whether the concerns about the possibility of a "windfall" to such entities that own the loans should be overridden by the demonstrated need of households that would benefit from the receipt of AHP subsidy and that may not otherwise be able to negotiate a refinancing or restructuring of their loans.

(ii) *Owner-occupied.* Under the proposed rule, the loan to be refinanced

must be secured by an owner-occupied unit that is the primary residence for the household. This is consistent with the existing requirements of the homeownership set-aside program for purchase assistance, and with the existing requirements for homeownership projects under the AHP competitive application program, which do not permit AHP subsidy assistance for the purchase, construction or rehabilitation of second homes such as vacation homes. 12 CFR 951.5(c)(1)(i) and 951.6(c)(4).

(iii) *Nontraditional or subprime loan.* Under the proposed rule, only a mortgage that is a nontraditional mortgage loan as defined by the Interagency Guidance on Nontraditional Mortgage Product Risks, issued October 4, 2006 (published at 71 FR 58609) (Interagency Guidance), or an ARM to a subprime borrower with features described in the Interagency Final Statement on Subprime Mortgage Lending, effective July 10, 2007 (published at 72 FR 37569) (Interagency Final Statement), is eligible. An ARM is a mortgage loan with an interest rate that fluctuates in accordance with a designated market indicator over the life of the loan.

The Interagency Guidance defines a nontraditional mortgage loan as a residential mortgage loan product that allows the borrower to defer repayment of principal or interest, including “interest-only” mortgages where a borrower pays no loan principal for the first few years of the loan, and “payment option” ARMs where a borrower has flexible payment options with the potential for negative amortization. Nontraditional mortgages do not include: Fully amortizing residential mortgage loan products; reverse mortgages; and closed-end second-lien or home equity lines of credit (HELOCs) unless they were originated simultaneously with the first lien mortgage loan. Specifically, the Interagency Guidance defines an interest-only loan as a nontraditional mortgage on which, for a specified number of years (*e.g.*, three or five years), the borrower is required to pay only the interest due on the loan during which time the rate may fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index and payments include both principal and interest. The Interagency Guidance defines a payment option ARM as a nontraditional mortgage that allows the borrower to choose from a number of different monthly payment options, such as a minimum payment option based on a “start” or introductory

interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15- or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization when the unpaid interest is added to the loan’s principal. If the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to establish a payment level that would fully amortize the outstanding balance over the remaining loan term, although the household would still have the option of paying less than the fully amortizing amount each month. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, the household must start paying the principal, and the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term of the loan.

The Interagency Final Statement defines a subprime borrower as a borrower displaying one or more credit risk characteristics at the time of loan origination or purchase, as set forth in the Interagency Expanded Guidance for Subprime Lending Programs (Expanded Guidance) (Jan. 31, 2001), and LCU 04–CU–13—Specialized Lending Activities for federally insured credit unions. A subprime loan is a loan to such a borrower. According to the Expanded Guidance, subprime borrowers typically are borrowers with weakened credit histories that include payment delinquencies and possibly more severe problems such as charge-offs, judgments, and bankruptcies. Subprime borrowers also may display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria such as incomplete credit histories. The Expanded Guidance includes an illustrative list of specific credit risk characteristics displayed by subprime borrowers. Subprime loans have a higher risk of default than loans to prime borrowers.

The Finance Board requests comment on whether loans eligible to be refinanced with AHP subsidy should be limited to purchase money mortgages, or should also include non-purchase money first mortgages that the household used to refinance a previous loan and in which the household took out equity as part of the transaction. If the AHP were used to refinance such non-purchase money first mortgages, then the Finance Board also requests

comment on whether there should be a limit as to how much equity the household has taken out of the home through previous refinancing and, if so, what that limit should be. In this regard, the Finance Board also requests comment on whether, and under what circumstances, the proposed refinancing authority should permit the refinancing of separate first and second mortgages into a single combined new mortgage assisted with AHP subsidy, where the second mortgage was used to take equity out of the home.

(iv) *Origination date.* Under the proposed rule, the loan must have been originated on or before July 10, 2007. This date is the effective date of the Interagency Final Statement. Consequently, any subprime loans made after that date should not be eligible for AHP subsidy. The proposed rule would make nontraditional loans subject to this effective date as well.

The proposed rule does not include a requirement that the loan to be refinanced or restructured must have been originated after a certain cut-off date in the past. For example, both the Presidential initiative to freeze interest rates on subprime loans (December 6, 2007) and the “FHA Housing Stabilization and Homeownership Retention Act of 2008” proposed by the Chairman of the House Committee on Financial Services in March 2008, require that the loan to be refinanced must have been originated on or after January 1, 2005. Subprime lending expanded significantly after 2003, with record-breaking origination volumes in 2005, when subprime loans accounted for about 23 percent of total residential mortgage originations.<sup>15</sup> The interest rates on most of these loans will have begun adjusting in 2007 and 2008. The Finance Board requests comment on whether such a cut-off date should be included in the rule.

(v) *Adjustment.* The proposed rule would require that in order to be eligible for AHP subsidy, the interest rate on a loan must have reset, or the principal and interest payments under the loan must have been recast, prior to the date of the household’s enrollment in the program; or the interest rate must be scheduled to reset, or the principal and interest payments under the loan must be scheduled to be recast, within 120 days after the date of the household’s enrollment in the program.

*Loan limit.* The proposed rule would not establish a limit on the outstanding principal balance of the loan to be refinanced. In Resolution Number 2008–

<sup>15</sup> “A Short History of Subprime,” Brenda B. White, Mortgage Banking (March 1, 2006).

01, the Finance Board required that the loan have an outstanding principal balance of \$417,000 or less to be eligible for refinancing. This amount is the conforming loan limit for Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) purchases of mortgages on owner-occupied units that was in effect at the time of Resolution Number 2008-01. In addition, under Resolution Number 2008-01, eligible loans had to be originated on or before July 10, 2007. Consequently, the conforming loan limit at the time of the origination of an eligible loan would not have exceeded \$417,000. The Finance Board requests comment on whether loans eligible for refinancing or restructuring with AHP assistance should be subject to a maximum amount. If a limit is appropriate, the Finance Board requests comment on what that limit should be, such as the Fannie Mae/Freddie Mac conforming limit in place at the time at the time of Resolution Number 2008-01, or the higher conforming loan limits authorized by the Economic Stimulus Act of 2008.

*F. Eligible Households: Proposed Section 951.6(f)(6)*

Proposed paragraph (f)(6) would provide that a household is eligible to receive AHP direct subsidy for the refinancing or restructuring of its loan if the household meets all of the requirements discussed below. The Finance Board requests comment on whether these eligibility criteria are appropriate, and whether any other eligibility criteria should be required for selection of households to participate in the program.

(i) *Delinquency prior to adjustment.* The proposed rule would require that the household has not been more than 30 days delinquent on its loan payments prior to the adjustment in the interest rate or principal and interest payments. The purpose of the proposed program is to assist households that can no longer afford, or will no longer be able to afford, their mortgage payments solely because of a recent or forthcoming increase in payments resulting from an interest-rate increase or a recast of principal and interest. The proposed requirement would help to ensure that the household can maintain its mortgage obligation after the refinancing or restructuring. The Finance Board requests comment on whether a household should be eligible if it was more than 30 days delinquent on its loan payments prior to the adjustment. The Finance Board also requests comment on whether a household

should be eligible only if the cause of its existing or potential delinquency is the adjustment, and not other personal financial setbacks, such as job loss, illness or divorce.

(ii) *Unsustainable loan payments after adjustment.* The proposed rule would require that, as a result of the adjustment in the interest rate or principal and interest payments, the household has or will have a total housing cost ratio exceeding 45 percent. Proposed paragraph (f)(2) would define "total housing cost ratio" to mean the household's total monthly principal and interest payments, mortgage insurance premiums, property taxes, hazard insurance premiums, flood insurance premiums, and homeowner association or condominium fees as a percentage of the household's gross monthly income. On September 4, 2007, the Federal Deposit Insurance Corporation (FDIC), the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators issued a joint statement cautioning lenders that a household monthly debt-to-income ratio, which they describe as including principal, interest, taxes, and insurance, above 50 percent increases the likelihood of future difficulties on repayment and delinquencies or defaults. In addition to establishing a total housing cost ratio of 45 percent as a threshold to determine household eligibility for AHP-assisted refinancing, the proposed rule would permit the use of AHP subsidy to achieve a new loan with a total housing cost ratio no greater than 45 percent for the assisted household. The Finance Board requests comment on whether the 45 percent ratio limit is an appropriate threshold for assessing whether a payment is sustainable for a low- or moderate-income household. The Finance Board also requests comment on whether it would be a reasonable use of AHP subsidy to allow a Bank to establish a maximum total housing cost ratio lower than 45 percent.

The proposed rule is predicated on the fact that the household was current on its mortgage payments prior to the interest-rate increase or payment recast, and can no longer afford its monthly housing payments solely as a result of the interest-rate increase or payment recast. Under the proposed rule, it may be possible that an eligible household already had a total housing cost ratio higher than 45 percent under the terms of its original loan prior to the adjustment to the interest rate or principal and interest payments, and past performance would indicate that the household could have sustained its payments at that initial level if the loan

payments had not adjusted upward. In this case, the proposed refinancing or restructuring, by using AHP subsidy to reduce the household's total housing cost ratio below 45 percent of its income, would make the household better off financially than it was prior to the adjustment by refinancing the household into a loan with lower payments than the household's initial payments.

The Finance Board requests comment on whether it is appropriate to use AHP subsidy to assist a household to refinance into a long-term, fixed-rate mortgage with total housing cost payments that are lower than the payments the household had prior to the interest-rate or principal-and-interest adjustments that the proposed program seeks to mitigate.

(iii) *Maximum home equity.* The proposed rule would provide that the household's equity in the home may not exceed the greater of \$50,000 or 20 percent of the newly appraised value of the home. Under the current homeownership set-aside program provisions of the AHP regulation, the issue of household equity does not arise for home purchase assistance, and household equity is not included as an eligibility standard for rehabilitation of owner-occupied units. The nature of the refinancing or restructuring transaction raises the issue of whether there should be a limit on the amount of a household's equity in the home. In many cases, the existence of significant equity in a home could enable a household to qualify for refinancing without AHP assistance. Substantial equity also represents a financial resource that the household could draw upon to assist in addressing its mortgage obligations. The Finance Board requests comment on whether maximum household equity is an appropriate eligibility requirement and, if so, whether the proposed maximum amount is appropriate.

(iv) *Maximum household financial assets.* The proposed rule would provide that the household may not have more than \$35,000 in total financial assets, excluding equity in the home being refinanced or restructured, tax-deferred retirement and education savings, and assets liquidated by the household to pay for eligible uses of AHP subsidy as defined in paragraph (f)(7). In proposing this requirement, the Finance Board intends that the AHP assistance be available to households that have limited other financial resources with which to mitigate or resolve their financial problems related to their level of mortgage payments. The Finance Board requests comment on

whether it is reasonable to include limitations on the amount of wealth a household may have to be eligible, whether the limitations should be based on home equity and total financial assets or net worth, and whether the proposed limitations are appropriate. In particular, the Finance Board requests comment on whether the determination of maximum total financial assets should exclude all or a portion of a household's tax-deferred retirement and education savings, as these may represent significant accrued wealth that the household might otherwise be expected to draw upon to address financial problems. The Finance Board also requests comment on whether a household should be required to contribute to the costs of the refinancing or restructuring of its loan. Under the homeownership set-aside program for purchase or rehabilitation, for example, ten Banks require that the household make a minimum contribution to the purchase or rehabilitation of the home, or award subsidy to the household based on the amount of the household's contribution to the down payment, closing costs or rehabilitation assistance.

(v) *Homeownership counseling.* Under the proposed rule, the household must complete a homeownership or credit counseling program provided by, or based on one provided by, an organization experienced in homeownership or credit counseling. The Finance Board believes that an AHP-assisted household should receive such counseling in connection with the loan refinancing or restructuring in order to help the household avoid delinquency or foreclosure through poor financial management or unsuitable future refinancing or restructuring of the AHP-assisted loan.

*G. Eligible Uses of AHP Direct Subsidy: Proposed Section 951.6(f)(7)*

Proposed paragraph (f)(7) would require members participating in a Bank's refinancing or restructuring program to provide the AHP direct subsidy for the purpose of paying for one or more of the eligible uses discussed below.

(i) *Interest rate buydown.* Under the proposed rule, the AHP subsidy may be used to buy down permanently the interest rate of the household's loan. The interest-rate buydown must be calculated as the amount of AHP direct subsidy necessary to reduce the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate (Freddie Mac national average rate) to a rate that will achieve, in conjunction with the use of the

subsidy for principal reduction as applicable, a household total housing cost ratio of 45 percent or less. The Finance Board proposes that the calculation of the amount of subsidy needed for the buydown be based on the net present value of the earnings difference between the household's reduced interest rate and the higher Freddie Mac national average rate for 10 years because most residential mortgages prepay within the first 10 years of the loan. This requirement also would be consistent with the pilot program previously approved for the San Francisco Bank.

(ii) *Principal reduction.* Under the proposed rule, the AHP subsidy may be used for reduction in the principal balance of the household's loan, calculated as the amount of AHP direct subsidy necessary to reduce the principal to achieve: (A) In conjunction with the use of the subsidy for an interest rate buydown as applicable, a household total housing cost ratio of 45 percent or less; and (B) a maximum loan-to-value ratio of 97 percent based on the home's newly appraised value. The Finance Board requests comment on whether an eligible use of the AHP subsidy should be to pay down loan principal that is the result of negative amortization (adding unpaid interest to the loan principal) on loans, such as option ARMs, that allowed the household the choice each month of paying less than the minimum amount necessary to pay the interest on the loan with no repayment of principal.

(iii) *Qualifying loan refinancing or restructuring costs.* Under the proposed rule, the AHP subsidy may be used to pay for qualifying loan refinancing or restructuring costs, reduced by the amount of any household or other third party contributions towards such costs. "Qualifying loan refinancing or restructuring costs" are defined in proposed paragraph (f)(2) as the following costs incurred in connection with a member's refinancing or restructuring of a household's loan: Property taxes and insurance payments previously paid by the lender on behalf of the household; accrued interest on the loan; and reasonable closing costs for the new AHP-assisted refinanced loan paid to bona fide third parties, as documented on a HUD-1A Settlement Statement. The Finance Board requests comment on whether these costs are appropriate for the use of AHP subsidy.

(iv) *Homeownership counseling costs.* Under the proposed rule, the AHP subsidy may be used for homeownership or credit counseling costs incurred by the household in connection with the refinancing or

restructuring of its loan. The Finance Board believes that this is a reasonable use of AHP subsidy as such counseling will help the household avoid delinquency or foreclosure through poor financial management or unsuitable future refinancing or restructuring of the AHP-assisted loan.

*H. Maximum Subsidy Amount; Required Member Payments: Proposed Section 951.6(f)(8)*

In this proposal, the Finance Board would require each member receiving AHP subsidy to contribute from its own resources an amount at least equal to two times the amount of the AHP subsidy received towards the eligible uses of the AHP subsidy. Proposed paragraph (f)(8) also would require that a member provide the AHP direct subsidy as a grant, in an amount up to a maximum of \$15,000 per household, as established by the Bank in its AHP Implementation Plan, which limit applies to all households. The member may not count toward meeting this obligation the value of any fees or compensation that the member may not charge under proposed paragraphs (f)(9)(i) and (ii)(B).

The proposed maximum subsidy limit of \$25,000 is consistent with the maximum subsidy limit the Finance Board approved in Resolution Number 2008-01 for the San Francisco Bank refinancing program. The Finance Board believes that the need for assistance for refinancing or restructuring subprime and nontraditional loans warrants a temporary increase in the current AHP homeownership set-aside limit of \$15,000 in order to allow for such assistance. Despite the current maximum of \$15,000 per household, in 2007 the actual amount of subsidy provided to a household averaged approximately \$5,400 under the homeownership set-aside program, and \$7,915 for homeownership projects under the competitive application program. The Finance Board requests comment on whether \$25,000 is the appropriate limit on the amount of AHP subsidy that may be provided per household under the proposed refinancing or restructuring program.

*I. Loan Refinancing or Restructuring Requirements: Proposed Section 951.6(f)(9)*

(i) *Original loan.* Proposed paragraph (f)(9)(i)(A) would require that members waive any prepayment fees for the household's prepayment of the original loan being refinanced. Proposed paragraph (f)(9)(i)(B) would require that members not charge for any foreclosure expenses incurred prior to the date of

the refinancing or restructuring of the household's original loan. Proposed paragraph (f)(9)(i)(C) would require that members not charge late charges not already paid by the borrower on the original loan, loan payoff statement fees, and recording costs and document preparation charges in connection with the payoff of the original loan.

The Finance Board believes that such charges are unwarranted in connection with use of AHP subsidy to mitigate a member's losses by helping to pay off and refinance or restructure a loan already held by the member.

(ii) *New AHP-assisted refinanced or restructured loan.* (1) *Loan characteristics.* Proposed paragraph (f)(9)(ii)(A) would require that the new AHP-assisted refinanced or restructured loan provided by the member to the household have all of the characteristics discussed below.

(A) *30-year, fixed-rate first mortgage.* Under the proposed rule, the new loan must be a minimum 30-year, fully amortizing, first mortgage loan with a fixed interest rate that does not exceed the Freddie Mac national average rate. This requirement is intended to provide households with a refinanced or restructured loan that has stable mortgage payments at a level intended to be sustainable to a low- or moderate-income household and thereby reduce the probability that the household will default on the AHP-assisted mortgage. The Finance Board proposes using the Freddie Mac national average rate as the maximum interest rate because it is readily available, consistent, and easy to verify. Nevertheless, the Finance Board recognizes that, in some cases, the Freddie Mac national average rate may be higher than the rate the member is charging for 30-year fixed-rate mortgages, or may reflect a higher margin between the member's cost of funds and the member's standard margin on a mortgage. In such cases, the use of the Freddie Mac national average rate would require more AHP subsidy in a buydown of the interest rate below that amount than would otherwise be necessary for the refinancing. The Finance Board requests comment on whether the maximum interest rate on the new AHP-assisted loan, from which an interest-rate buydown is calculated, should be based on the Freddie Mac national average rate, or on another rate such as the Freddie Mac regional average rate for the member's region, the member's lowest advertised rate for a 30-year fixed-rate mortgage, or a margin above the member's actual cost of funds using the Bank's CIP rate, in order to minimize the amount of AHP subsidy

needed to achieve a sustainable fixed-interest rate for the household.

The Finance Board also requests comment on whether it would be reasonable to permit the new loan to be an ARM if the interest rate on the loan is capped and the household's total housing cost ratio would continue to be 45 percent or less at the fully-indexed capped interest rate.

(B) *Maximum loan-to-value ratio.* Under the proposed rule, the new loan must have a maximum loan-to-value ratio of 97 percent of the newly appraised value of the home. The Finance Board has proposed a maximum loan-to-value ratio of 97 percent because some household equity in the home reduces the probability that the household will default on the mortgage, and this loan-to-value ratio is consistent with the minimum equity requirements for refinancing under the FHA and FHA Secure programs. At the same time, the depreciation in home values may make it difficult, even with AHP assistance, to achieve a 97 percent loan-to-value ratio for all eligible households' loans. Recognizing this problem, several state bond programs for refinancing subprime ARMs will finance up to 100 percent of the appraised value of the home. The Finance Board requests comment on whether a minimum equity requirement would be appropriate, or whether it would be reasonable to permit a loan-to-value ratio of up to 100 percent of the newly appraised value of the home.

(C) *Escrow account.* Under the proposed rule, the member must establish an escrow account for monthly payments by the household on the new loan for the purpose of paying property taxes, hazard insurance premiums, and flood insurance premiums if applicable. The Interagency Final Statement identifies the failure of the lender to establish escrow accounts for monthly payments of taxes and insurance by the household as a feature that often indicates a subprime loan. Lack of lender-administered escrow accounts may result in the household not paying taxes and insurance directly as required. This could lead to the household's losing its home if the lender finances the arrears and adds them to the household's loan principal, resulting in additional interest charges and increases in monthly payments that the household cannot afford. If the lender does not finance the arrears, then the household may lose its home due to unpaid taxes.

(D) *Secondary financing.* Under the proposed rule, there may be no secondary financing at closing on the new loan, except grants, forgivable

loans, or soft loans made by a not-for-profit organization or government agency in order to assist in the loan refinancing or restructuring or that provided down payment or closing cost assistance for the original purchase of the home. The household may need more financial assistance than the AHP and the member can provide under the proposed program. There may be other private and public programs that provide grants or forgivable secondary financing in order to allow households to pay off existing subprime and nontraditional loans and obtain long-term fixed-rate mortgages. The Finance Board wishes to allow a household to avail itself of additional sources of assistance where possible. In addition, a number of low- or moderate-income households may have received grants or forgivable loans for down payments and closing costs for the initial purchase of their homes, and may still be subject to agreements for that assistance.

(E) *Nontraditional or subprime loan.* Under the proposed rule, the new loan may not have any characteristics of a nontraditional or subprime loan. Such a loan would contradict the intention of the proposed program.

(2) *Prohibited fees.* Proposed paragraph (f)(9)(ii)(B) would prohibit the member from charging the household fees on the new AHP-assisted refinanced or restructured loan, including origination fees, and discount points that increase the yield above the Freddie Mac national average rate. Under ordinary circumstances, the member might increase its yield on the new loan in order to compensate for the fact that the household is still a subprime credit risk that increases the risk of delinquency and default on the refinanced or restructured loan. Such methods of increasing the member's yield, which increase the household's cost for the new loan above the amount intended (*i.e.*, the contract rate determined by the targeted total housing cost ratio for each assisted household), would contradict the intent of the proposed program and bring into question the need for the AHP subsidy for the interest-rate buydown of the AHP-assisted refinanced or restructured loan.

In Resolution Number 2008-01, the Finance Board recognized that there may be concerns that AHP subsidy would be used to compensate members for earnings foregone on the original loan, many of which carried interest rates, after adjustments, well above market rates. Several provisions of the proposed rule would prevent any such compensation to the member for the foregone earnings resulting from the

reduction in the interest rate of the original loan to the Freddie Mac national average rate that the member would be earning on the new loan. First, the proposed rule would require that the existing loan be refinanced or restructured into a permanent, self-amortizing 30-year mortgage with a maximum fixed rate no greater than the Freddie Mac national average rate, which means that the member could not charge a higher rate to the household. Second, the proposed rule would permit the use of AHP subsidy to buy down the interest rate only from the Freddie Mac national average rate, and not from any higher rate on the original loan down to the Freddie Mac national average rate. Third, the proposed prohibition on points and fees that would increase the member's yield above the Freddie Mac national average rate also would prevent the member from being compensated for some of the foregone earnings from the higher interest rate on the original loan.

*J. Repayment of AHP Subsidy in Event of Foreclosure: Proposed Section 951.6(f)(10)*

Proposed paragraph (f)(10) would provide that if, during the AHP five-year retention period, the member, an affiliate of the member, or any other entity forecloses on, or accepts a deed in lieu of foreclosure on, a new AHP-assisted restructured or refinanced loan, the member must repay the Bank a pro rata share of the AHP direct subsidy, reduced for every year prior to the foreclosure or deed in lieu, for the five-year period. The Finance Board believes that it would not be appropriate for a member to use AHP subsidy to help refinance or restructure a loan and subsequently foreclose upon that loan in the short term without repayment of the subsidy. If foreclosure were to occur, the household would not realize the full benefit anticipated and intended from the program. Requiring the member to repay a pro rata share of the subsidy in the case of foreclosure should help to align further the interest of the member with the interest of the homeowner in preserving homeownership. It also is consistent with the statutory requirements that low- or moderate-income households receive a preponderance of the AHP assistance, and that the AHP subsidies Banks provide to members are passed on to the ultimate borrowers. See 12 U.S.C. 1430(j)(9)(D) and (E).

*K. Sunset: Proposed Section 951.6(f)(12)*

Proposed paragraph (f)(12) would provide that the Banks' authority to establish loan refinancing or restructuring programs pursuant to

paragraph (f) will expire on June 30, 2011, and the Bank may not commit AHP subsidy to households under such programs after that date. The FDIC estimates that in 2008 and 2009, about 1.7 million subprime mortgages will reach their reset dates, while a study by Deutsche Bank Securities shows the greatest dollar amount of subprime loans resetting in 2008, with a significant drop in subprime mortgages due to reset after 2010.<sup>16</sup> Therefore, the date of June 30, 2011 was selected.

*L. Monitoring: Proposed Section 951.7(b)*

The proposed rule would amend existing section 951.7(b), which sets forth the monitoring requirements for homeownership set-aside programs generally, to make a Bank's loan refinancing or restructuring program subject to those monitoring requirements. Accordingly, a Bank's written monitoring policies for its homeownership set-aside programs would have to include policies for monitoring compliance with the requirements of its loan refinancing or restructuring programs. The monitoring policies for the loan refinancing or restructuring programs would include requirements for: (i) Determining whether AHP subsidy was provided to households meeting all applicable household eligibility requirements in section 951.6(c)(2) and (f)(6), and all other applicable eligibility requirements in section 951.6(c) and (f); (ii) Bank review of member certifications prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in section 951.6(c) and (f); and (iii) Bank review of back-up documentation regarding household incomes maintained by the member, and maintenance and Bank review of other documentation in the Bank's discretion.

*The Finance Board invites comments on all aspects of the proposed rule.*

**III. Paperwork Reduction Act**

The information collection contained in the current AHP regulation, entitled "Affordable Housing Program (AHP)," has been assigned control number 3069-0006 by the Office of Management and Budget (OMB). The proposed rule, if adopted as a final rule, will not substantively or materially modify the approved information collection.

<sup>16</sup>Martin J. Gruenberg, Vice Chairman, FDIC, Speech before the 11th Annual Wall Street Project Economic Summit, New York, New York, January 8, 2008; James R. Hagerty and Ken Gepfer, "One Family's Journey Into a Subprime Trap," Real Estate Journal.com, August 17, 2007.

Consequently, the Finance Board has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995 (PRA). See 44 U.S.C. 3501 *et seq.*

**IV. Regulatory Flexibility Act**

The proposed rule, if adopted as a final rule, will 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). Therefore, 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.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR, chapter IX, part 951, 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 § 951.6 by adding paragraph (f) to read as follows:

**§ 951.6 Homeownership set-aside programs.**

\* \* \* \* \*

(f) *Loan refinancing or restructuring programs.*—(1) *General.* A Bank may establish one or more homeownership set-aside programs for the use of AHP direct subsidy by its members to refinance or restructure a household's mortgage loan, provided such programs meet the requirements of this paragraph (f) and otherwise meet the requirements of part 951. The provisions of § 951.6(c)(2)(ii), (c)(4), and (c)(8) shall not apply to such programs, nor shall the provision of § 951.6(c)(2)(iii) relating to first-time homebuyers.

(2) *Definitions.* For purposes of this paragraph (f): *Qualifying loan refinancing or restructuring costs* means the following costs incurred in connection with a member's refinancing or restructuring of a household's loan: property taxes and insurance payments by the lender on behalf of the household; accrued interest on the loan; and reasonable closing costs for the new AHP-assisted refinanced loan paid to bona fide third parties, as documented on a HUD-1A Settlement Statement.

*Total housing cost ratio* means the household's total monthly principal and interest payments, mortgage insurance premiums, property taxes, hazard insurance premiums, flood insurance premiums, and homeowner association or condominium fees as a percentage of the household's gross monthly income.

(3) *Member allocation criteria.* If the Bank opts to allocate AHP subsidy through a procedure in which members reserve upfront allocations prior to enrolling households, rather than one in which members reserve AHP subsidy as they enroll individual households, the Bank shall establish a period of time during which all members may apply for the subsidy, after which the Bank shall determine the amount of the AHP subsidy it will reserve for each participating member, based on the number and amount of member requests, a member's capacity to perform under the terms of the program, and the amount of AHP direct subsidy available.

(4) *Household access and notification.* (i) Members shall inform all mortgage loan customers of the availability of AHP direct subsidy under the program to assist in a loan refinancing or restructuring.

(ii) Members shall make the AHP direct subsidy available to eligible households on a first-come, first-served basis.

(5) *Eligible loans.* A loan is eligible to be refinanced or restructured with AHP direct subsidy if it meets the following requirements:

(i) *Member or affiliate loan.* The loan is held by a member or an affiliate of such member;

(ii) *Owner-occupied.* The loan is secured by a first mortgage on an owner-occupied unit that is the primary residence of the household;

(iii) *Nontraditional or subprime.* The loan is a nontraditional mortgage loan as defined by the Interagency Guidance on Nontraditional Mortgage Product Risks issued October 4, 2006 (published at 71 FR 58609), or an adjustable rate mortgage loan to a subprime borrower with features described in the Interagency Final Statement on Subprime Mortgage Lending effective July 10, 2007 (published at 72 FR 37569);

(iv) *Origination date.* The loan was originated on or before July 10, 2007; and

(v) *Adjustment.* (A) The loan's interest rate has reset, or the principal and interest payments under the loan have been recast, prior to the date of the household's enrollment in the program; or

(B) The loan's interest rate is scheduled to reset, or the principal and interest payments under the loan are scheduled to be recast, within 120 days after the date of the household's enrollment in the program.

(6) *Eligible households.* A household is eligible to receive AHP direct subsidy for the refinancing or restructuring of its loan if the household meets the following requirements:

(i) *Delinquency prior to adjustment.* The household has not been more than 30 days delinquent on its loan payments prior to the adjustment in the interest rate or principal and interest payments;

(ii) *Unsustainable loan payments after adjustment.* As a result of the adjustment in the interest rate or principal and interest payments, the household has or will have a total housing cost ratio exceeding 45 percent;

(iii) *Maximum home equity.* The household's equity in the home does not exceed the greater of \$50,000 or 20 percent of the newly appraised value of the home;

(iv) *Maximum household financial assets.* The household does not have more than \$35,000 in total financial assets, excluding home equity, tax-deferred retirement and education savings, and assets liquidated by the household to pay for eligible uses of AHP subsidy as defined in paragraph (f)(7) of this section; and

(v) *Homeownership counseling.* The household completes a homeownership or credit counseling program provided by, or based on one provided by, an organization experienced in homeownership or credit counseling.

(7) *Eligible uses of AHP direct subsidy.* Members shall provide the AHP direct subsidy to pay for:

(i) The first 10 years of a permanent interest-rate buydown of the interest rate of the household's new loan. The interest-rate buydown shall be calculated as the amount of AHP direct subsidy necessary to reduce the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate to a rate that will achieve, in conjunction with the use of the subsidy for principal reduction as applicable, a household total housing cost ratio of 45 percent or less.

(ii) Reduction in the principal balance of the household's loan, calculated as the amount of AHP direct subsidy necessary to reduce the principal to achieve:

(A) In conjunction with the use of the subsidy for an interest rate buydown as applicable, a household total housing cost ratio of 45 percent or less; and

(B) A maximum loan-to-value ratio of 97 percent based on the newly appraised value of the home;

(iii) Qualifying loan refinancing or restructuring costs in connection with an interest rate buydown and/or principal reduction, reduced by the amount of any household or other third party contributions towards such costs; or

(iv) Homeownership or credit counseling costs in connection with an interest rate buydown and/or principal reduction.

(8) *Maximum subsidy amount; required member payments.* Members shall provide the AHP direct subsidy as a grant, in an amount up to a maximum of \$25,000 per household, as established by the Bank in its AHP Implementation Plan, which limit shall apply to all households. As a condition to receiving such AHP subsidy, a member shall pay, from its own resources, eligible uses of AHP subsidy, as defined in paragraph (f)(7) of this section, including waivers of such costs, in an amount equal to at least two times the amount of the AHP subsidy provided.

(9) *Loan refinancing or restructuring requirements.* (i) Original loan. (A) Prepayment fees. Members shall waive any prepayment fees for the household's prepayment of the original loan being refinanced.

(B) *Foreclosure expenses.* Members shall not charge for any foreclosure expenses incurred prior to the date of the refinancing or restructuring of the household's original loan.

(C) *Other fees and expenses.* Members shall not charge late charges not already paid by the household on the original loan, loan payoff statement fees, and recording costs and document preparation charges in connection with the payoff of the original loan.

(ii) *New AHP-assisted refinanced or restructured loan.* (A) Characteristics. The new AHP-assisted refinanced or restructured loan provided by the member to the household shall have the following characteristics:

(1) Minimum 30-year, fully amortizing, first mortgage loan with a fixed interest rate that does not exceed the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate;

(2) Maximum loan-to-value ratio of 97 percent of the new appraised value of the home;

(3) Establishment of an escrow account for monthly payments by the household for the purpose of paying property taxes, hazard insurance premiums, and flood insurance premiums if applicable;

(4) No secondary financing at closing, except grants, forgivable loans or soft loans made by a not-for-profit organization or government agency in order to assist in the loan refinancing or restructuring or that provided down payment or closing cost assistance for the original purchase of the home; and

(5) No characteristics of a nontraditional or subprime loan.

(B) *Prohibited fees.* Members shall not charge the household fees on the new AHP-assisted refinanced or restructured loan, including origination fees, and discount points that increase the yield above the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate.

(10) *Repayment of AHP subsidy in event of foreclosure.* If, during the AHP five-year retention period, the member, an affiliate of the member, or any other entity forecloses on, or accepts a deed in lieu of foreclosure on, a loan restructured or refinanced pursuant to this paragraph (f), the member shall repay the Bank a pro rata share of the AHP direct subsidy, reduced for every year prior to the foreclosure or deed in lieu, for the five-year period.

(11) *Sunset.* The requirements contained in this paragraph (f) shall expire on June 30, 2011, and the Bank may not commit AHP subsidy to households under its program established pursuant to this paragraph (f) after that date.

3. Amend § 951.7 by:

a. In paragraph (b)(1)(i), adding “and § 951.6(f)(6)” after “§ 951.6(c)(2)”;

b. In paragraph (b)(1)(ii), adding “and § 951.6(f)” after “§ 951.6(c)”;

c. In paragraph (b)(2)(i), adding “and § 951.6(f)” after “§ 951.6(c)”.

Dated: April 9, 2008.

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

**Ronald A. Rosenfeld.**

*Chairman.*

[FR Doc. E8-7949 Filed 4-15-08; 8:45 am]

BILLING CODE 6725-01-P

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA 2007-0102]

RIN 0960-AG74

#### Revised Medical Criteria for Evaluating Cardiovascular Disorders

**AGENCY:** Social Security Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We are requesting your comments on whether and how we should update and revise the criteria we use to evaluate claims involving cardiovascular disorders in adults and children. These criteria are found in sections 4.00 and 104.00 of the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We are requesting your comments as part of our ongoing effort to ensure that the listings are up-to-date.

After we have considered your comments and suggestions, other information about advances in medical knowledge, treatment, and methods of evaluating cardiovascular disorders, and our program experience using the current listings, we will determine whether we should revise any of the cardiovascular listings. If we propose specific revisions to the listings, we will publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**.

**DATES:** To be sure that your comments are considered, we must receive them no later than June 16, 2008.

**ADDRESSES:** You may submit comments by one of four methods—Internet, facsimile, regular mail, or hand-delivery. Please do not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA-2007-0102 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at <http://www.regulations.gov>. (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the *Comment or Submission* section of the webpage, type “SSA-2007-0102”, select “Go”, and then click “Send a Comment or Submission.” The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966-2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

*Caution:* Our policy for comments we receive from members of the public is to make them available for public viewing in their entirety on the Federal eRulemaking portal at <http://www.regulations.gov>. Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

**FOR FURTHER INFORMATION CONTACT:**

Diane Braunstein, Director, Office of Compassionate Allowances and Listings Improvement, Social Security Administration, 4468 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1020, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

**What is the purpose of this ANPRM?**

The purpose of this ANPRM is to give you an opportunity to send us comments and suggestions on whether and how we might update and revise listings 4.00 and 104.00 for evaluating cardiovascular disorders. We last published final rules revising the criteria that we use to evaluate cardiovascular disorders in the **Federal Register** on January 13, 2006 (71 FR 2311). We are publishing this ANPRM as part of our ongoing effort to ensure that our criteria are effective and reflect the latest advances in medicine.

**On which rules are we inviting comments?**

We are interested in any comments and suggestions you have on whether and how we might revise, update, and clarify sections 4.00 and 104.00 of the listings. You can find the current rules for these listings on the Internet at the following locations:

- Sections 4.00 and 104.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at [http://www.ssa.gov/OP\\_Home/cfr/20/404/404-ap10.htm](http://www.ssa.gov/OP_Home/cfr/20/404/404-ap10.htm).

- Section 4.00 of the listings is also available at <http://www.ssa.gov/disability/professionals/bluebook/4.00-Cardiovascular-Adult.htm>.