

## Federal Housing Finance Agency

## § 1291.1

day that applications may be submitted to the Targeted Fund, unless the Targeted Fund is specifically targeted to address a Federal- or State-declared disaster.

[80 FR 30342, May 28, 2015, as amended at 83 FR 61231, Nov. 28, 2018; 87 FR 32969, June 1, 2022]

### § 1290.7 Bank Advisory Council Annual Reports.

Each Annual Report submitted by a Bank's Advisory Council to FHFA pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)) must include an analysis of the Bank's targeted community lending and affordable housing activities.

### § 1290.8 Compliance dates.

From December 28, 2018 to December 31, 2020, a Bank shall comply with either prior part 1290 (in 12 CFR part 1290 (January 1, 2018 edition)) or this part 1290. On and after January 1, 2021, a Bank shall comply with this part 1290.

[83 FR 61231, Nov. 28, 2018]

## PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

### Subpart A—General

Sec.

1291.1 Definitions.

1291.2 Compliance dates.

### Subpart B—Program Administration and Governance

1291.10 Required annual AHP contribution.

1291.11 Temporary suspension of AHP contributions.

1291.12 Allocation of required annual AHP contribution.

1291.13 Targeted Community Lending Plan; AHP Implementation Plan.

1291.14 Advisory Councils.

1291.15 Agreements.

1291.16 Conflicts of interest.

### Subpart C—General Fund and Targeted Funds

1291.20 Establishment of programs.

1291.21 Eligible applicants.

1291.22 Funding rounds; application process.

1291.23 Eligible projects.

1291.24 Eligible uses.

1291.25 Scoring methodologies.

1291.26 Scoring criteria for the General Fund.

1291.27 Scoring criteria for Targeted Funds.

1291.28 Approval of AHP applications under the General Fund and Targeted Funds.

1291.29 Modifications of approved AHP applications.

1291.30 Procedures for funding.

1291.31 Lending and re-lending of AHP direct subsidy by revolving loan funds.

1291.32 Use of AHP subsidy in loan pools.

### Subpart D—Homeownership Set-Aside Programs

1291.40 Establishment of programs.

1291.41 Eligible applicants.

1291.42 Eligibility requirements.

1291.43 Approval of AHP applications.

1291.44 Procedures for funding.

### Subpart E—Monitoring

1291.50 Monitoring under General Fund and Targeted Funds.

1291.51 Monitoring under Homeownership Set-Aside Programs.

### Subpart F—Remedial Actions for Noncompliance

1291.60 Remedial actions for project non-compliance.

1291.61 Recovery of subsidy for member non-compliance.

1291.62 Bank reimbursement of AHP fund.

1291.63 Suspension and debarment.

1291.64 Use of repaid AHP subsidies.

1291.65 Transfer of Program administration.

### Subpart G—Affordable Housing Reserve Fund

1291.70 Affordable Housing Reserve Fund.

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

SOURCE: 83 FR 61231, Nov. 28, 2018, unless otherwise noted.

### Subpart A—General

#### § 1291.1 Definitions.

As used in this part:

*Affordable* means that:

(1) The rent charged to a household for a unit that is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 persons

per unit without a separate bedroom); or

(2) The rent charged to a household, for rental units subsidized with Section 8 assistance under 42 U.S.C. 1437f or subsidized under another assistance program where the rents are charged in the same way as under the Section 8 program, if the rent complied with this definition at the time of the household's initial occupancy and the household continues to be assisted through the Section 8 or another assistance program, respectively.

*AHP* means the Affordable Housing Program required to be established by the Banks pursuant to 12 U.S.C. 1430(j) and this part.

*AHP project* means a single-family or multifamily housing project for owner-occupied or rental housing that has been awarded or has received AHP subsidy under a Bank's General Fund and any Targeted Funds.

*Cost of funds* means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

*Direct subsidy* means an AHP subsidy in the form of a direct cash payment.

*Eligible household* means a household that meets the income limits and other requirements specified by a Bank for its General Fund and any Targeted Funds and Homeownership Set-Aside Programs, provided that:

(1) In the case of owner-occupied housing, the household's income may not exceed 80 percent of the median income for the area; and

(2) In the case of rental housing, the household's income in at least 20 percent of the units may not exceed 50 percent of the median income for the area.

*Eligible project* means a project eligible to receive AHP subsidy pursuant to the requirements of this part.

*Extremely low-income household* means a household that has an income at or below 30 percent of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard selected from those enumerated in the definition of "median income for the area," unless

such median income standard has no household size adjustment methodology.

*Family member* means any individual related to a person by blood, marriage, or adoption.

*Funding round* means a time period, as determined by a Bank, during which the Bank accepts AHP applications for subsidy under its General Fund and any Targeted Funds.

*General Fund* means a program that each Bank is required to establish and under which the Bank approves (*i.e.*, awards) applications for AHP subsidy through a competitive application scoring process and disburses the subsidy, pursuant to the requirements of this part.

*Homeownership Set-Aside Program* means a program established by a Bank, in its discretion, under which the Bank approves (*i.e.*, awards) applications for AHP direct subsidy through a noncompetitive process developed by the Bank and disburses the subsidy, pursuant to the requirements of this part.

*Household's investment* means the following, to the extent paid by the household and documented (in the Closing Disclosure or other settlement statement, if applicable, or elsewhere) to the Bank or its designee:

(1) Reasonable and customary costs paid by the household in connection with the purchase of the unit (including real estate broker's commission, attorney's fees, and title search fees);

(2) Any down payment paid in connection with the household's purchase of the unit;

(3) The cost of any capital improvements made after the household's purchase of the unit until the time of the subsequent sale, transfer, assignment of title or deed, or refinancing; and

(4) The amount of principal on any mortgage senior to the AHP subsidy lien or other legally enforceable AHP subsidy repayment obligation repaid by the household.

*LIHTC* means Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code (26 U.S.C. 42).

*Loan pool* means a group of mortgage or other loans meeting the requirements of this part that are purchased, pooled, and held in trust.

## Federal Housing Finance Agency

## § 1291.1

*Low- or moderate-income household* means a household that has an income of 80 percent or less of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard selected from those enumerated in the definition of “median income for the area,” unless such median income standard has no household size adjustment methodology.

*Median income for the area* means one or more of the following median income standards as determined by a Bank, after consultation with its Advisory Council, in its AHP Implementation Plan:

(1) The median income for the area, as published annually by HUD;

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

(3) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a state agency or instrumentality;

(4) The median income for the area, as published by the United States Department of Agriculture; or

(5) The median income for an applicable definable geographic area, as published by a federal, state, or local government entity, and approved by FHFA, at the request of a Bank, for use under the AHP.

*Multifamily building* means a structure with five or more dwelling units.

*Net earnings of a Bank* means the net earnings of a Bank for a calendar year before declaring or paying any dividend under section 16 of the Bank Act (12 U.S.C. 1436). For purposes of this part, “dividend” includes any dividends on capital stock subject to a redemption request even if under GAAP those dividends are treated as an “interest expense.”

*Net proceeds* means:

(1) In the case of a sale, transfer, or assignment of title or deed of an AHP-assisted unit by a household during the AHP five-year retention period, the sales price minus reasonable and customary costs paid by the household in connection with the transaction (including real estate broker’s commission, attorney’s fees, and title search

fees) and outstanding debt superior to the AHP subsidy lien or other legally enforceable AHP subsidy repayment obligation;

(2) In the case of a refinancing of an AHP-assisted unit by a household during the AHP five-year retention period, the principal amount of the new mortgage minus reasonable and customary costs paid by the household in connection with the transaction (including attorney’s fees and title search fees) and the principal amount of the refinanced mortgage.

*Owner-occupied project* means, for purposes of a Bank’s General Fund and any Targeted Funds, one or more owner-occupied units in a single-family or multifamily building, including condominiums, cooperative housing, and manufactured housing.

*Owner-occupied unit* means a dwelling unit occupied by the owner of the unit. Housing with two to four dwelling units consisting of one owner-occupied unit and one or more rental units is considered a single owner-occupied unit.

*Program* means the Affordable Housing Program established pursuant to this part.

*Rental project* means, for purposes of a Bank’s General Fund and any Targeted Funds, one or more dwelling units for occupancy by households that are not owner-occupants, including overnight and emergency shelters, transitional housing for homeless households, mutual housing, single-room occupancy housing, and manufactured housing communities.

*Retention period* means:

(1) Five years from closing for an AHP-assisted owner-occupied unit where the AHP subsidy is used for purchase of the unit, for purchase in conjunction with rehabilitation of the unit, or for construction of the unit; and

(2) Fifteen years from the date of completion for a rental project.

*Revolving loan fund* means a capital fund established to make mortgage or other loans whereby loan principal is repaid into the fund and re-lent to other borrowers.

*Single-family building* means a structure with one to four dwelling units.

## § 1291.2

*Sponsor* means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest), as defined by the Bank in its AHP Implementation Plan, in a rental project;

(2) Is integrally involved, as defined by the Bank in its AHP Implementation Plan, in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units;

(3) Operates a loan pool; or

(4) Is a revolving loan fund.

*Subsidized advance* means an advance to a member at an interest rate reduced below the Bank's cost of funds by use of a subsidy.

*Subsidy* means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy must equal the net present value of the interest foregone from making the loan below the lender's market interest rate; or

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds.

*Targeted Fund* means a program established by a Bank, in its discretion, to address specific affordable housing needs within its district that are unmet, have proven difficult to address through its General Fund, or align with objectives identified in its strategic plan, under which the Bank approves (*i.e.*, awards) applications for AHP subsidy through a competitive application scoring process developed by the Bank and disburses the subsidy, pursuant to the requirements of this part.

*Very low-income household* means a household that has an income at or below 50 percent of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard selected from those enumerated in the definition of "median income for the area," unless such median income standard has no

## 12 CFR Ch. XII (1–1–25 Edition)

household size adjustment methodology.

*Visitable* means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 34 inches wide, offering 32 inches of clear passage space.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.2 Compliance dates.

(a) *General January 1, 2021 compliance date.* Except as provided in paragraph (b) of this section, from December 28, 2018 to December 31, 2020, a Bank shall comply with either prior part 1291 (in 12 CFR part 1291 (January 1, 2018 edition)) or this part 1291, and on and after January 1, 2021, a Bank shall comply with this part 1291.

(b) *January 1, 2020 compliance date for owner-occupied retention agreements; exception for adoption of proxies.* From December 28, 2018 to December 31, 2019, a Bank shall comply with either prior § 1291.9(a)(7) (in 12 CFR part 1291 (January 1, 2018 edition)) or § 1291.15(a)(7), and on and after January 1, 2020, a Bank shall comply with § 1291.15(a)(7), except that a Bank shall comply with § 1291.15(a)(7)(ii)(B) on the date set forth in the FHFA guidance on proxies referenced therein.

## Subpart B—Program Administration and Governance

### § 1291.10 Required annual AHP contribution.

Each Bank shall contribute annually to its Program the greater of:

(a) 10 percent of the Bank's net earnings for the previous year; or

(b) That Bank's pro rata share of an aggregate of \$100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year, except that the required annual AHP contribution for a Bank shall not exceed its net earnings in the previous year.

## Federal Housing Finance Agency

## § 1291.13

### § 1291.11 Temporary suspension of AHP contributions.

(a) *Request to FHFA.* If a Bank finds that the contributions required pursuant to § 1291.10 are contributing to the financial instability of the Bank, the Bank may apply in writing to FHFA for a temporary suspension of such contributions.

(b) *Director review*—(1) *Financial instability.* In determining the financial instability of a Bank, the Director shall consider such factors as:

- (i) Severely depressed Bank earnings;
- (ii) A substantial decline in Bank membership capital; and
- (iii) A substantial reduction in Bank advances outstanding.

(2) *Limitations on grounds for suspension.* The Director shall not suspend a Bank's annual AHP contributions if it determines that the Bank's reduction in earnings is due to:

- (i) A change in the terms of advances to members that is not justified by market conditions;
- (ii) Inordinate operating and administrative expenses; or
- (iii) Mismanagement.

### § 1291.12 Allocation of required annual AHP contribution.

Each Bank, after consultation with its Advisory Council and pursuant to written policies adopted by the Bank's board of directors, shall meet the following requirements for allocation of its required annual AHP contribution.

(a) *General Fund.* Each Bank shall allocate annually at least 50 percent of its required annual AHP contribution to provide funds to members through a General Fund established and administered by the Bank pursuant to the requirements of this part.

(b) *Homeownership Set-Aside Programs.* A Bank may, in its discretion, allocate annually, in the aggregate, up to the greater of \$4.5 million or 35 percent of its required annual AHP contribution to provide funds to members participating in Homeownership Set-Aside Programs established and administered by the Bank pursuant to the requirements of this part, provided that at least one-third of the Bank's aggregate annual set-aside allocation to such programs is allocated to assist first-time homebuyers or households for owner-

occupied rehabilitation, or a combination of both.

(c) *Targeted Funds—phase-in requirements for funding allocations.* Unless otherwise directed by FHFA and subject to the phase-in requirements for the number of Targeted Funds in § 1291.20(b), a Bank may, in its discretion, allocate annually, up to:

(1) 20 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds;

(2) 30 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds, provided that it allocated at least 20 percent, in the aggregate, of its required annual AHP contribution to one or more Targeted Funds in any preceding year; or

(3) 40 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds, provided that it allocated at least 30 percent, in the aggregate, of its required annual AHP contribution to one or more Targeted Funds in any preceding year.

(d) *Acceleration of funding.* A Bank may, in its discretion, accelerate to its current year's Program from future required annual AHP contributions an amount up to the greater of \$5 million or 20 percent of its required annual AHP contribution for the current year. The Bank may credit the amount of the accelerated contribution against required AHP contributions under this part 1291 over one or more of the subsequent five years.

(e) *No delegation.* A Bank's board of directors shall not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility for adopting the Bank's policies for its General Fund and any Targeted Funds and Homeownership Set-Aside Programs.

### § 1291.13 Targeted Community Lending Plan; AHP Implementation Plan.

(a) *Targeted Community Lending Plan*—(1) *Identification of housing needs.* Pursuant to the requirements of 12 CFR 1290.6(a)(5)(v) and (vi), a Bank's annual Targeted Community Lending Plan adopted under its community support program shall, among other things, identify the significant affordable housing needs in its district that

## § 1291.13

## 12 CFR Ch. XII (1–1–25 Edition)

will be addressed through its AHP, as well as any specific affordable housing needs it plans to address through any Targeted Funds as set forth in its AHP Implementation Plan.

(2) *Public access.* A Bank shall publish its current Targeted Community Lending Plan on its publicly available website, and shall publish any amendments to its Targeted Community Lending Plan on the website within 30 days after the date of their adoption by the Bank's board of directors and no later than the date of publication on the website of its annual AHP Implementation Plan (as amended). If such amendments relate to the Bank's AHP, the Bank shall publish them no later than the date of publication on its website of its annual AHP Implementation Plan (as amended). If a Bank plans to establish any Targeted Funds under its AHP, the Bank must publish its Targeted Community Lending Plan (as amended) on the website at least 90 days before the first day that applications may be submitted to the Targeted Fund, unless the Targeted Fund is specifically targeted to address a Federal- or State-declared disaster.

(3) *Notification of Plan amendments to FHFA.* A Bank shall notify FHFA of any amendments to its Targeted Community Lending Plan within 30 days after the date of their adoption by the Bank's board of directors.

(b) *AHP Implementation Plan.* Each Bank's board of directors, after consultation with its Advisory Council, shall adopt a written AHP Implementation Plan, and shall not amend the AHP Implementation Plan without first consulting its Advisory Council. The Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for such prior consultations with the Advisory Council, and shall not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility for adopting or amending the AHP Implementation Plan. The AHP Implementation Plan shall set forth, at a minimum:

(1) The applicable median income standard or standards adopted by the Bank consistent with the definition of "median income for the area" in § 1291.1.

(2) For the General Fund established by the Bank pursuant to § 1291.20(a), the Bank's requirements for the General Fund, including the Bank's scoring methodology, including its scoring tie-breaker policy adopted pursuant to §§ 1291.25(c) and 1291.28(c), and any policy on approving AHP application alternates for funding pursuant to §§ 1291.25(c)(6) and 1291.28(b).

(3) For each Targeted Fund established by the Bank, if any, pursuant to § 1291.20(b), the Bank's requirements for the Targeted Fund, including the Bank's scoring methodology for each Fund, including its scoring tie-breaker policy adopted pursuant to §§ 1291.25(c) and 1291.28(c), and any policy on approving AHP application alternates for funding pursuant to §§ 1291.25(c)(6) and 1291.28(b), and the parameters adopted pursuant to § 1291.20(b)(2).

(4) The Bank's policy on how it will determine under which Fund to approve an application for the same project that is submitted to more than one Fund at a Bank in a calendar year and scores high enough to be approved under each Fund, pursuant to § 1291.28(d).

(5) For each Homeownership Set-Aside Program established by the Bank, if any, pursuant to § 1291.40, the Bank's requirements for the program, including the Bank's application and subsidy disbursement methodology.

(6) The Bank's retention agreement requirements for projects and households under its General Fund, any Targeted Funds, and any Homeownership Set-Aside Programs, pursuant to § 1291.15(a)(7) and (8), including the proxy or proxies selected by the Bank for determining a subsequent purchaser's income pursuant to FHFA guidance under § 1291.15(a)(7)(ii)(B).

(7) The Bank's standards for approving a relocation plan for current occupants of rental projects pursuant to § 1291.23(a)(2)(ii)(B).

(8) Any optional Bank district eligibility requirements adopted by the Bank pursuant to § 1291.24(c).

(9) The Bank's requirements for funding revolving loan funds, if adopted by the Bank pursuant to § 1291.31;

(10) The Bank's requirements for funding loan pools, if adopted by the Bank pursuant to § 1291.32;

## Federal Housing Finance Agency

## § 1291.14

(11) The Bank's requirements for monitoring under its General Fund and any Targeted Funds and Homeownership Set-Aside Programs pursuant to §§ 1291.50 and 1291.51.

(12) The Bank's requirements, including time limits, for re-use of repaid AHP direct subsidy in the same project, if adopted by the Bank pursuant to § 1291.64(b).

(c) *Advisory Council review.* Prior to the amendment of a Bank's AHP Implementation Plan, the Bank shall provide its Advisory Council an opportunity to review the document, and the Advisory Council shall provide its recommendations to the Bank's board of directors for its consideration.

(d) *Notification of Plan amendments to FHFA.* A Bank shall notify FHFA of any amendments made to its AHP Implementation Plan within 30 days after the date of their adoption by the Bank's board of directors.

(e) *Public access.* A Bank shall publish its current AHP Implementation Plan on its publicly available website, and shall publish any amendments to the AHP Implementation Plan on the website within 30 days after the date of their adoption by the Bank's board of directors.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.14 Advisory Councils.

(a) *Appointment.* (1) Each Bank's board of directors shall appoint an Advisory Council of 7 to 15 persons who reside in the Bank's district and are drawn from community and not-for-profit organizations that are actively involved in providing or promoting low- and moderate-income housing, and community and not-for-profit organizations that are actively involved in providing or promoting community lending, in the district. Community organizations include for-profit organiza-

(2) Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient time for responses.

(3) The Bank's board of directors shall appoint Advisory Council mem-

bers from a diverse range of organizations so that representatives of no one group constitute an undue proportion of the membership of the Advisory Council, giving consideration to the size of the Bank's district and the diversity of low- and moderate-income housing and community lending needs and activities within the district.

(b) *Terms of Advisory Council members.* Pursuant to policies adopted by the Bank's board of directors, Advisory Council members shall be appointed by the Bank's board of directors to serve for terms of three years, which shall be staggered to provide continuity in experience and service to the Advisory Council, except that Advisory Council members may be appointed to serve for terms of one or two years solely for purposes of reconfiguring the staggering of the three-year terms. No Advisory Council member may be appointed to serve for more than three full consecutive terms. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office.

(c) *Election of officers.* Each Advisory Council shall elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(d) *Duties—(1) Meetings with the Banks.* (i) The Advisory Council shall meet with representatives of the Bank's board of directors at least quarterly to provide advice on ways in which the Bank can better carry out its housing finance and community lending mission, including, but not limited to, advice on the low- and moderate-income housing and community lending programs and needs in the Bank's district, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(ii) The Advisory Council's advice shall include recommendations on:

(A) The Bank's Targeted Community Lending Plan, and any amendments thereto, pursuant to 12 CFR 1290.6(a)(5)(iii);

(B) The amount of AHP funds to be allocated to the Bank's General Fund and any Targeted Funds and Homeownership Set-Aside Programs, including

## § 1291.15

## 12 CFR Ch. XII (1–1–25 Edition)

how the set-aside funds should be apportioned under the one-third funding allocation requirement in §1291.12(b);

(C) The AHP Implementation Plan and any subsequent amendments thereto;

(D) The Bank's scoring methodologies, related definitions, and any additional optional district eligibility requirements for the General Fund and any Targeted Funds; and

(E) The eligibility requirements and any priority criteria for any Homeownership Set-Aside Programs.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding rounds.

(3) *Annual analysis; public access.* (i) Each Advisory Council annually shall submit to FHFA by May 1 its analysis of the low- and moderate-income housing and community lending activity of the Bank by which it is appointed.

(ii) Within 30 days after the date the Advisory Council's annual analysis is submitted to FHFA, the Bank shall publish the analysis on its publicly available website.

(e) *Expenses.* The Bank shall pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank and meetings requested by FHFA.

(f) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to appoint persons as members of the Advisory Council or to meet with the Advisory Council at the quarterly meetings required by the Bank Act (12 U.S.C. 1430(j)(11)).

### § 1291.15 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving an AHP subsidized advance or AHP direct subsidy an agreement or agreements containing, at a minimum, the following provisions, where applicable:

(1) *Notification of member.* The member has been notified of the requirements of this part as they may be amended from time to time, and all

Bank policies relevant to the member's approved application for AHP subsidy.

(2) *AHP subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project or household, as applicable, for which the subsidy was approved.

(3) *Use of AHP subsidy—*(i) *Use of AHP subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(ii) *Use of AHP subsidy by the project sponsor or owner.* The member shall have in place an agreement with each project sponsor or owner in which the project sponsor or owner agrees to use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(4) *Repayment of AHP subsidies in case of noncompliance—*(i) *Noncompliance by the member.* The member shall repay AHP subsidies to the Bank in accordance with the requirements of §1291.61.

(ii) *Noncompliance by a project sponsor or owner—*(A) *Agreement.* The member shall have in place an agreement with each project sponsor or owner in which the project sponsor or owner agrees to repay AHP subsidies to the member or the Bank in accordance with the requirements of §1291.60.

(B) *Recovery of AHP subsidies.* The member shall recover from the project sponsor or owner and repay to the Bank AHP subsidies in accordance with the requirements of §1291.60 (if applicable).

(5) *Project monitoring—*(i) *Monitoring by the member.* The member shall comply with the monitoring requirements applicable to it, as established by the Bank in its monitoring policies pursuant to §§1291.50 and 1291.51.

(ii) *Agreement; LIHTC noncompliance notice.* The member shall have in place an agreement with each project sponsor and owner, in which the project sponsor and owner agree to comply with the monitoring requirements applicable to such parties, as established by the Bank in its monitoring policies pursuant to §1291.50. The member's agreement shall also include an agreement by the project owner to provide prompt written notice to the Bank if



the project also received LIHTC and the project is in material and unresolved noncompliance with the LIHTC income targeting or rent requirements at any time during the AHP 15-year retention period.

(6) *Transfer of AHP obligations*—(i) *To another member.* The member shall make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(ii) *To a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy, and where the member received an AHP subsidized advance, the nonmember assumes such obligations until prepayment or orderly liquidation by the nonmember of the subsidized advance.

(7) *Owner-occupied units—required provisions for retention agreements.* The member shall ensure that where a household receives AHP subsidy for purchase, for purchase in conjunction with rehabilitation, or for construction of an owner-occupied unit, the unit is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) *Notice.* The Bank, and in its discretion any designee of the Bank, shall be given notice of any sale, transfer, assignment of title or deed, or refinancing of the unit by the household occurring during the AHP five-year retention period;

(ii) *Repayment of subsidy; exceptions.* In the case of a sale, transfer, assignment of title or deed, or refinancing of the unit by the household during the retention period, the amount of AHP subsidy calculated in accordance with paragraph (a)(7)(v) of this section shall be repaid to the Bank, unless one of the following exceptions applies:

(A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;

(B) The subsequent purchaser, transferee, or assignee is a low- or moderate-income household, as determined by the Bank. For any sale, transfer, or assignment that occurs after the date established by FHFA in guidance on the use of proxies, the Bank or its designee shall determine the household's income using one or more proxies that are reliable indicators of the subsequent purchaser's income, which may be selected by the Bank pursuant to the FHFA guidance and shall be included in the Bank's AHP Implementation Plan, unless documentation demonstrating that household's actual income is available. The Bank or its designee is not required to request or obtain such documentation, but must use it in lieu of a proxy if available;

(C) The amount of the AHP subsidy that would be required to be repaid in accordance with the calculation in paragraph (a)(7)(v) of this section is \$2,500 or less; or

(D) Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (a)(7);

(iii) *Subsidy repayments to Bank, member, or project sponsor.* In the case of a direct subsidy, such repayment of AHP subsidy shall be made:

(A) To the Bank. If the Bank has not authorized re-use of the repaid AHP subsidy or has authorized re-use of the repaid subsidy but not retention of such repaid subsidy by the member or project sponsor pursuant to § 1291.64(b) of this part, or has authorized retention and re-use of such repaid subsidy by the member or project sponsor pursuant to such section and the repaid subsidy is not re-used in accordance with the requirements of the Bank and such section; or

(B) To the member or project sponsor. To the member or project sponsor for re-use by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 1291.64(b);

(iv) *Termination of subsidy repayment obligation.* The obligation to repay AHP subsidy to the Bank shall terminate after any event of foreclosure, transfer

by deed-in-lieu of foreclosure, an assignment of a Federal Housing Administration first mortgage to HUD, or death of the AHP-assisted homeowner; and

(v) *Calculation of AHP subsidy repayment based on net proceeds and household's investment.* The Bank shall be repaid the lesser of:

(A) The AHP subsidy, reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, or is refinanced, during the AHP five-year retention period; or

(B) Any net proceeds from the sale, transfer, or assignment of title or deed of the unit, or the refinancing, as applicable, minus the AHP-assisted household's investment.

(8) *Rental projects—required provisions for retention agreements.* The member shall ensure that an AHP-assisted rental project is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) *Income and rent commitments.* The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the approved AHP application for the duration of the AHP 15-year retention period;

(ii) *Notice.* The Bank, and in its discretion any designee of the Bank, shall be given notice of any sale, transfer, assignment of title or deed, or refinancing of the project by the project owner occurring during the retention period;

(iii) *Repayment of subsidy; exceptions.* In the case of a sale, transfer, assignment of title or deed, or refinancing of the project by the project owner during the retention period, the full amount of the AHP subsidy received by the project owner shall be repaid to the Bank, unless one of the following exceptions applies:

(A) The project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the duration of the AHP 15-year retention period; or

(B) If authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the AHP 15-year retention period; and

(iv) *Termination of income and rent restrictions.* The income-eligibility and affordability restrictions applicable to the project shall terminate after any foreclosure.

(9) *Lending of AHP direct subsidies.* If a member or a project sponsor lends AHP direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank, unless the direct subsidy is being both lent and re-lent by a revolving loan fund pursuant to § 1291.31(d).

(10) *Special provisions where members obtain AHP subsidized advances—(i) Repayment schedule.* The term of an AHP subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(ii) *Prepayment fees.* Upon a prepayment of an AHP subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(iii) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by an AHP subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(A) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in re-investing the repaid amount at a rate

## Federal Housing Finance Agency

## § 1291.16

of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(B) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(b) *Agreements between Banks and project sponsors or owners*—(1) *Repayment of subsidies*. A Bank may have in place an agreement with each project sponsor or owner, in which the project sponsor or owner agrees to repay AHP subsidies directly to the Bank in accordance with the requirements of § 1291.60.

(2) *Project sponsor qualifications*. A Bank's AHP subsidy application form and AHP subsidy disbursement form for each subsidy disbursement (or other related documents) must include a requirement for the project sponsor to provide a certification that it meets the project sponsor qualifications criteria established by the Bank and that it has not engaged in, and is not engaging in, covered misconduct as defined in FHFA's Suspended Counterparty Program regulation (12 CFR part 1227), or as defined by the Bank, provided the Bank's definition incorporates the definition in 12 CFR part 1227 at a minimum.

(c) *Application to existing AHP agreements*. The requirements of section 10(j) of the Bank Act (12 U.S.C. 1430(j)) and the provisions of this part, as amended, are incorporated into all AHP agreements between a Bank and any member, project sponsor, or project owner receiving AHP subsidies under the General Fund and any Targeted Funds, and between a Bank and any member or unit owner under any Homeownership Set-Aside Programs. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of ac-

tions taken prior to the effective date of such amendment.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.16 Conflicts of interest.

(a) *Bank directors and employees*. (1) Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(2) If a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (a)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(b) *Advisory Council members*. (1) Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(2) If an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (b)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(c) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt the conflict of interest policies required by this section.

### Subpart C—General Fund and Targeted Funds

#### § 1291.20 Establishment of programs.

(a) *General Fund*—(1) *Establishment.* A Bank shall establish a General Fund pursuant to the requirements of this part.

(2) *Eligibility requirements.* A Bank may not adopt eligibility requirements for its General Fund except as specifically authorized in this part.

(b) *Targeted Funds*—(1) *Establishment; number of Targeted Funds and funding allocation amounts.* A Bank may establish, in its discretion, up to three Targeted Funds to address specified affordable housing needs in its district pursuant to the phase-in funding allocation requirements in § 1291.12(c)(1), the following phase-in requirements for the number of Targeted Funds unless otherwise directed by FHFA, and any other applicable requirements of this part:

- (i) One Targeted Fund;
- (ii) Two Targeted Funds to be administered in the same calendar year, provided that the Bank administered at least one Targeted Fund in any preceding year; or
- (iii) Three Targeted Funds to be administered in the same calendar year, provided that the Bank administered at least two Targeted Funds in any preceding year.

(2) *Eligibility requirements.* (i) A Bank shall adopt and implement parameters, which shall be included in its AHP Implementation Plan, for ensuring that each Targeted Fund is designed to receive sufficient numbers of applicants for the amount of AHP funds allocated to the Targeted Fund to enable the Bank to facilitate a robust competitive scoring process.

(ii) A Bank may not adopt eligibility requirements for its Targeted Funds except as specifically authorized in this part.

#### § 1291.21 Eligible applicants.

(a) *Member applicants.* A Bank shall accept applications for AHP subsidy under its General Fund and any Targeted Funds only from institutions that are members of the Bank at the time the application is submitted to the Bank.

(b) *Project sponsor qualifications*—(1) *In general.* A project sponsor must be qualified and able to perform its responsibilities as committed to in the application for AHP subsidy funding the project.

(2) *Revolving loan fund.* Pursuant to written policies adopted by a Bank's board of directors, a revolving loan fund sponsor that intends to use AHP direct subsidy in accordance with § 1291.31 shall:

- (i) Provide audited financial statements that its operations are consistent with sound business practices; and
- (ii) Demonstrate the ability to re-lend AHP subsidy repayments on a timely basis and track the use of the AHP subsidy.

(3) *Loan pool.* Pursuant to written policies adopted by a Bank's board of directors, a loan pool sponsor that intends to use AHP subsidy in accordance with § 1291.32 shall:

- (i) Provide evidence of sound asset/liability management practices;
- (ii) Provide audited financial statements that its operations are consistent with sound business practices; and
- (iii) Demonstrate the ability to track the use of the AHP subsidy.

#### § 1291.22 Funding rounds; application process.

(a) *Funding rounds.* A Bank may accept applications from proposed projects for AHP subsidy under its General Fund and any Targeted Funds during a specified number of funding rounds each year, as determined by the Bank.

(b) *Submission of applications.* Except as provided in § 1291.29(a), a Bank shall require applications for AHP subsidy to contain information sufficient for the Bank to:

- (1) Determine that the proposed AHP project meets the eligibility requirements of this part; and

## Federal Housing Finance Agency

## § 1291.23

(2) Evaluate the application pursuant to the scoring methodology adopted by the Bank pursuant to §§ 1291.25, 1291.26, and 1291.27, as applicable.

(c) *Review of applications submitted.* Except as provided in § 1291.29(b), a Bank shall review the applications for AHP subsidy to determine that the proposed AHP project meets the eligibility requirements of this part, and shall evaluate the applications pursuant to the Bank's scoring methodology adopted pursuant to §§ 1291.25, 1291.26, and 1291.27, as applicable.

### § 1291.23 Eligible projects.

Projects receiving AHP subsidies pursuant to a Bank's General Fund and any Targeted Funds must meet the following eligibility requirements:

(a) *Owner-occupied or rental housing.* The AHP subsidy shall be used exclusively for:

(1) *Owner-occupied housing.* The purchase, construction, or rehabilitation of an owner-occupied project for very low-income or low- or moderate-income households, where the housing is to be used as the household's primary residence. A household must have an income meeting the income targeting commitments in the approved AHP application at the time it is qualified by the project sponsor for participation in the project;

(2) *Rental housing.* The purchase, construction, or rehabilitation of a rental project, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

(i) *Projects that are not occupied.* For a rental project that is not occupied at the time the AHP application is submitted to the Bank for approval, a household must have an income meeting the income targeting commitments in the approved AHP application upon initial occupancy of the rental unit.

(ii) *Projects that are occupied.* (A) Except as provided in paragraph (a)(2)(ii)(B) of this section, for a rental project involving purchase or rehabilitation that is occupied at the time the AHP application is submitted to the Bank for approval, a household must have an income meeting the income targeting commitments in the ap-

proved AHP application at the time of such submission.

(B) If the project has a relocation plan for current occupants that is approved by one of its federal, state, or local government funders, or a reasonable relocation plan for current occupants that is otherwise approved by the Bank according to standards included in the Bank's AHP Implementation Plan, a household may have an income meeting the income targeting commitments upon initial occupancy of the rental unit after completion of the purchase or rehabilitation.

(b) *Project feasibility*—(1) *Developmental feasibility.* The project must be likely to be completed and occupied, based on relevant factors contained in the Bank's project feasibility guidelines, including, but not limited to, the development budget, market analysis, and project sponsor's experience in providing the requested assistance to households.

(2) *Operational feasibility of rental projects.* A rental project must be able to operate in a financially sound manner, in accordance with the Bank's project feasibility guidelines, as projected in the project's operating pro forma.

(c) *Timing of AHP subsidy use.* Some or all of the AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for AHP subsidy funding the project.

(d) *Retention agreements*—(1) *Owner-occupied projects.* Each AHP-assisted unit in an owner-occupied project for which the AHP subsidy was used for purchase, for purchase in conjunction with rehabilitation, or for construction of the unit by the AHP-assisted household, is, or is committed to be, subject to a five-year retention agreement described in § 1291.15(a)(7).

(2) *Rental projects.* AHP-assisted rental projects are, or are committed to be, subject to a 15-year retention agreement as described in § 1291.15(a)(8).

(e) *Fair housing.* The project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing

## § 1291.24

## 12 CFR Ch. XII (1–1–25 Edition)

Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.24 Eligible uses.

(a) *Eligible uses of AHP subsidy.* AHP subsidies shall be used only for:

(1) *Owner-occupied housing.* The purchase, construction, or rehabilitation of owner-occupied housing.

(2) *Rental housing.* The purchase, construction, or rehabilitation of rental housing.

(3) *Need for AHP subsidy*—(i) *Review of project development budget.* The project's estimated sources of funds shall equal its estimated uses of funds, as reflected in the project's development budget. The difference between the project's sources of funds (excluding AHP subsidy) and uses of funds is the project's need for AHP subsidy, which is the maximum amount of AHP subsidy the project may receive. A Bank, in its discretion, may permit a project's sources of funds to include or exclude the estimated market value of in-kind donations and voluntary professional labor or services (excluding the value of sweat equity), provided that the project's uses of funds also include or exclude, respectively, the value of such estimates.

(ii) *Cash sources of funds.* A project's cash sources of funds shall include any cash contributions by the sponsor, any cash from sources other than the sponsor, and estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project. In the case of homeownership projects where the sponsor extends permanent financing to the homebuyer, the sponsor's cash contribution shall include the present value of any payments the sponsor is to receive from the buyer, which shall include any cash down payment from the buyer, plus the present value of any purchase note the sponsor holds on the unit. If the note carries a market interest rate commensurate with the credit quality of the buyer, the present value of the note equals the face value

of the note. If the note carries an interest rate below the market rate, the present value of the note shall be determined using the market rate to discount the cash flows.

(iii) *Cash uses.* A project's cash uses are the actual outlay of cash needed to pay for materials, labor, and acquisition or other costs of completing the project. Cash costs do not include in-kind donations, voluntary professional labor or services, or sweat equity.

(4) *Project costs*—(i) *In general.* (A) Taking into consideration the geographic location of the project, development conditions, and other non-financial household or project characteristics, a Bank shall determine that a project's costs, as reflected in the project's development budget, are reasonable, in accordance with the Bank's project cost guidelines.

(B) For purposes of determining the reasonableness of a developer's fee for a project as a percentage of total development costs, a Bank may, in its discretion, include estimates of the market value of in-kind donations and volunteer professional labor or services (excluding the value of sweat equity) committed to the project as part of the total development costs.

(ii) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to the project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the "as-is" or "as-rehabilitated" value of the property, whichever is appropriate. That value shall be reflected in an independent appraisal of the property performed by a state certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within 6 months prior to the date the Bank disburses AHP subsidy to the project.

## Federal Housing Finance Agency

## § 1291.24

(5) *Financing costs.* The rate of interest, points, fees, and any other charges for all loans that are made for the project in conjunction with the AHP subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(6) *Counseling costs.* Counseling costs, provided:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(7) *Refinancing.* Refinancing of an existing single-family or multifamily mortgage loan, provided that the refinancing produces equity proceeds and such equity proceeds up to the amount of the AHP subsidy in the project shall be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this part.

(8) *Calculation of AHP subsidy.* (i) Where an AHP direct subsidy is provided to a project to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the net present value of the interest foregone from making the loan below the lender's market interest rate shall be calculated as of the date the application for AHP subsidy is submitted to the Bank, and subject to adjustment under § 1291.30(d).

(ii) Where an AHP subsidized advance is provided to a project, the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds shall be determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

(b) *Prohibited uses of AHP subsidy.* AHP subsidy may not be used to pay for:

(1) *Certain prepayment fees.* Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless:

(i) The project is in financial distress that cannot be remedied through a project modification pursuant to § 1291.29;

(ii) The prepayment of the subsidized advance is necessary to retain the project's affordability and income targeting commitments;

(iii) Subsequent to such prepayment, the project will continue to comply with the terms of the approved AHP application and the requirements of this part for the duration of the original retention period;

(iv) Any unused AHP subsidy is returned to the Bank and made available for other AHP projects or households; and

(v) The amount of AHP subsidy used for the prepayment fee may not exceed the amount of the member's prepayment fee to the Bank;

(2) *Cancellation fees.* Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled;

(3) *Processing fees.* Processing fees charged by members for providing AHP direct subsidies to a project; or

(4) *Reserves and certain expenses.* Capitalized reserves, periodic deposits to reserve accounts, operating expenses, or supportive services expenses.

(c) *Optional Bank district eligibility requirements.* A Bank may require a project receiving AHP subsidies to meet one or more of the following additional eligibility requirements adopted by the Bank's board of directors and included in its AHP Implementation Plan after consultation with its Advisory Council:

(1) *AHP subsidy limits.* A requirement that the amount of AHP subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member, per project sponsor, per project, or per project unit in a single AHP funding round. Each General Fund or Targeted Fund may contain up to all four of these optional AHP subsidy limits, each of which must apply to all applicants to the specific Fund. A Bank's AHP subsidy limit per member must be the same for each of its Funds and its AHP subsidy limit per project sponsor must be the same for each of its Funds, but a Bank's AHP

## § 1291.25

## 12 CFR Ch. XII (1–1–25 Edition)

subsidy limit per project and per project unit may differ among the Funds.

(2) *Homebuyer or homeowner counseling.* A requirement that a household must complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively.

(d) *Applications to multiple Funds—subsidy amount.* If an application for a project is submitted to more than one Fund at the same time, the application for each Fund must be for the same amount of AHP subsidy.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.25 Scoring methodologies.

(a)(1) *Written scoring methodologies.* A Bank shall establish a written scoring methodology for its General Fund and for any Targeted Fund setting forth the Bank's scoring point allocations as required in paragraph (a)(2) of this section, scoring criteria adopted pursuant to the requirements of §§ 1291.26 and 1291.27, as applicable, and related definitions. The scoring methodology for each Fund may be different. A Bank shall not adopt scoring points allocations or scoring criteria for its General Fund and any Targeted Funds except as specifically authorized under this paragraph (a)(1) and §§ 1291.26 and 1291.27, respectively.

(2) *Scoring points allocations—(i) General Fund.* A Bank shall allocate 100 points among all of the scoring criteria adopted by the Bank for its General Fund pursuant to § 1291.26. The scoring criterion for targeting in § 1291.26(d) shall be allocated at least 20 points. The remaining scoring criteria shall be allocated at least 5 points each, except that if a Bank adopts the scoring criterion for home purchase by low- or moderate-income households in § 1291.26(c) as an optional scoring criterion, the Bank may allocate fewer than the full 5 points to it, with the remainder of such points allocated to one or a combination of the other scoring criteria in § 1291.26 other than to the scoring criterion for Bank district priorities in § 1291.26(h). If a Bank adopts a scoring criterion under its Bank dis-

trict priorities for housing located in the Bank's district, the Bank may not allocate points to the scoring criterion in a way that excludes all out-of-district projects from its General Fund.

(ii) *Targeted Funds.* A Bank shall allocate 100 points among all of the scoring criteria adopted by the Bank for each Targeted Fund pursuant to § 1291.27. A Bank may not allocate more than 50 points to any one scoring criterion for a Targeted Fund.

(3) *Fixed-point and variable-point scoring criteria.* A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion, defined as follows:

(i) *Fixed-point scoring criteria* are those that cannot be satisfied in varying degrees and are either satisfied or not, with the total number of points allocated to the criterion awarded by the Bank to an application meeting the criterion; and

(ii) *Variable-point criteria* are those where there are varying degrees to which an application can satisfy the criteria, with the number of points that may be awarded to an application for meeting the criterion varying, depending on the extent to which the application satisfies the criterion, based on a fixed scale or on a scale relative to the other applications being scored. A Bank shall designate the targeting scoring criterion in § 1291.26(d) as a variable-point criterion.

(b) *Satisfaction of scoring criteria.* A Bank shall award scoring points to applications to a particular Fund based on satisfaction of the scoring criteria in the Bank's scoring methodology for that Fund.

(c) *Scoring tied applications.* A Bank shall establish and implement, as necessary, a scoring tie-breaker policy to address the case of two or more applications to its General Fund or any Targeted Fund receiving identical scores in the same AHP funding round and there is insufficient AHP subsidy to approve all of the tied applications but sufficient subsidy to approve one of them. A Bank shall meet the following requirements in establishing its scoring tie-breaker policy:

(1) The Bank shall consult with its Advisory Council prior to adoption of its policy;



## Federal Housing Finance Agency

## § 1291.26

(2) The Bank shall adopt the policy in advance of an AHP funding round and include it in its AHP Implementation Plan;

(3) The policy shall include the methodology used to break a scoring tie, which may differ for each Fund, and which shall be selected from the particular Fund's scoring criteria adopted in the Bank's AHP Implementation Plan;

(4) The scoring tie-breaker methodology shall be reasonable, transparent, verifiable, and impartial;

(5) The scoring tie-breaker methodology shall be used solely to break a scoring tie and may not affect the eligibility of the applications, including financial feasibility, or their scores and resultant rankings;

(6) The Bank shall approve a tied application as an alternate pursuant to § 1291.28(b) if the application does not prevail under the scoring tie-breaker methodology, or if the application is tied with another application but requested more subsidy than the amount of AHP funds that remain to be awarded, if the Bank has a written policy to approve alternates for funding under the applicable Fund; and

(7) The Bank shall document in writing its analysis and results for each use of the scoring tie-breaker methodology.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.26 Scoring criteria for the General Fund.

A Bank shall adopt in its scoring methodology for its General Fund all of the following categories of scoring criteria, including at least one housing need under each of paragraphs (e), (f), and (g) of this section, except that a Bank is not required to adopt the scoring criterion for homeownership by low- or moderate-income households in paragraph (c) of this section if the Bank allocates at least 10 percent of its required annual AHP contribution to any Homeownership Set-Aside Programs, and a Bank is not required to adopt the scoring criterion for Bank district priorities in paragraph (h) of this section:

(a) *Use of donated or conveyed government-owned or other properties.* The fi-

nancing of housing using a significant proportion, as defined by the Bank in its AHP Implementation Plan, of:

(1) Land or units donated or conveyed by the federal government or any agency or instrumentality thereof; or

(2) Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP Implementation Plan.

(b) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

(c) *Home purchase by low- or moderate-income households.* The financing of home purchases by low- or moderate-income households.

(d) *Income targeting.* The extent to which a project provides housing for very low- and low- or moderate-income households, as follows:

(1) *Rental projects.* An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area.

(2) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on a declining scale to be determined by the Bank in its AHP Implementation Plan, taking into consideration percentages of units and targeted income levels.

(3) *Separate scoring.* For purposes of this scoring criterion, applications for

owner-occupied projects and rental projects may be scored separately.

(e) *Underserved communities and populations.* The financing of housing for underserved communities or populations, by addressing one or more of the following specific housing needs:

(1) *Housing for homeless households.* The financing of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of 6 months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households, with the term “homeless households” defined by the Bank in its AHP Implementation Plan.

(2) *Housing for special needs populations.* The financing of housing in which at least 20 percent of the units are reserved for households with specific special needs, such as: The elderly; persons with disabilities; formerly incarcerated persons; persons recovering from physical abuse or alcohol or drug abuse; victims of domestic violence, dating violence, sexual assault or stalking; persons with HIV/AIDS; or unaccompanied youth; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing. A Bank may, in its discretion, adopt a requirement that projects provide supportive services, or access to supportive services, for specific special needs populations identified by the Bank in order for the project to receive scoring points under this paragraph (e)(2).

(3) *Housing for other targeted populations.* The financing of housing in which at least 20 percent of the units are reserved for households specifically in need of housing, such as agricultural workers, military veterans, Native Americans, households requiring large units, or kinship care households in which children are in the care of cohabitating relatives, such as grandparents, aunts or uncles, or cohabitating close family friends.

(4) *Housing in rural areas.* The financing of housing located in a rural area, as defined by the Bank in its AHP Implementation Plan.

(5) *Rental housing for extremely low-income households.* The financing of rental housing in which a minimum percentage of the units, as defined by the Bank in its AHP Implementation Plan, are reserved for extremely low-income households. Points awarded under this criterion shall be awarded in addition to any points awarded for income targeting under paragraph (d)(1) of this section, such that the points awarded to a project under this criterion and the income targeting criterion, combined, may exceed the maximum number of possible points awarded under the income targeting criterion.

(6) *Other.* The financing of other housing addressing specific housing needs of underserved communities or populations as FHFA may provide by guidance.

(f) *Creating economic opportunity.* The financing of housing that facilitates economic opportunity for the residents by addressing one or more of the following specific housing needs:

(1) *Promotion of empowerment.* The provision of housing in combination with a program offering services that assist residents in attaining life skills or moving toward better economic opportunities, such as: Employment; education; training; homebuyer, homeownership or tenant counseling; child care; adult daycare services; afterschool care; tutoring; health services, including mental health and behavioral health services; resident involvement in decision making affecting the creation or operation of the project; or workforce preparation and integration.

(2) *Residential economic diversity.* The financing of either affordable housing in a high opportunity area, or mixed-income housing in an area designated by the Bank, with those terms defined and area designated by the Bank in its AHP Implementation Plan.

(3) *Other.* The financing of other housing that facilitates economic opportunity as FHFA may provide by guidance.

(g) *Community stability, including affordable housing preservation.* The promotion of community stability, such as by preserving affordable housing, rehabilitating vacant or abandoned properties, or being an integral part of a community revitalization or economic

## Federal Housing Finance Agency

## § 1291.29

development strategy approved by a unit of state or local government or instrumentality thereof, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(h) *Bank district priorities.* The satisfaction of one or more housing needs in the Bank's district, as defined by the Bank in its AHP Implementation Plan, that the Bank has not otherwise adopted under this section.

### § 1291.27 Scoring criteria for Targeted Funds.

A Bank shall adopt in its scoring methodology for each Targeted Fund established by the Bank at least three different scoring criteria, as determined by the Bank in its discretion, that allow the Bank to select applications that meet the specific affordable housing need or needs being addressed by the Targeted Fund.

### § 1291.28 Approval of AHP applications under the General Fund and Targeted Funds.

(a) *Approval of AHP applications.* Subject to the requirements in paragraphs (c) and (d) of this section, a Bank shall approve applications for AHP subsidy under its General Fund and any Targeted Funds that meet all of the applicable AHP eligibility requirements in this part in descending order, starting with the highest scoring application until the total funding amount for the particular AHP funding round, except for any amount insufficient to fund the next highest scoring application, has been approved.

(b) *AHP application alternates.* For the General Fund and any Targeted Funds, the Bank also may, in its discretion, approve a specified number, as determined by the Bank, of the next highest scoring applications as alternates eligible for funding, and may approve any tied applications as alternates eligible for funding pursuant to paragraph (c)(2) of this section, if any previously committed AHP subsidies become available, pursuant to a written policy on approving alternates for funding established by the Bank and included in the Bank's AHP Implementation Plan.

If a Bank has established such a policy for approving alternates for funding and sufficient previously committed AHP subsidies become available within one year of application approval, the Bank shall approve the designated alternates for funding within that one-year period.

(c) *Tied applications.* (1) Where two or more applications to a General Fund or Targeted Fund have identical scores in the same AHP funding round and there is insufficient AHP subsidy to approve all of the tied applications but sufficient subsidy to approve one of them, a Bank shall approve the tied application that prevails under the Bank's scoring tie-breaker methodology in its policy adopted pursuant to § 1291.25(c).

(2) A tied application that does not prevail under the Bank's scoring tie-breaker methodology, or is tied with another application but requested more subsidy than the amount of AHP funds that remain to be awarded under the Fund, shall be approved as an alternate for funding if the Bank has a written policy to approve alternates for funding under the Fund.

(d) *Applications to multiple Funds—approval under one Fund.* If an application for the same project is submitted to more than one Fund at a Bank in a calendar year and the application scores high enough to be approved under each Fund, the Bank shall approve the application under only one of the Funds pursuant to the Bank's policy established in its AHP Implementation Plan.

(e) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to approve or disapprove the AHP subsidy applications, as well as any alternates under the Bank's General Fund and any Targeted Fund if the Bank has a written policy to approve alternates for funding under such Fund.

### § 1291.29 Modifications of approved AHP applications.

(a) *Modification procedure.* If, prior to or after final disbursement of funds to a project from all funding sources, in order to remedy noncompliance or receive additional subsidy, there is or will be a change in the project that

would change the score that the project application received in the AHP funding round in which it was originally scored and approved, had the changed facts been operative at that time, a Bank shall approve in writing a request for a modification to the terms of the approved application, provided that:

(1) The Bank first requests that the project sponsor or owner make a reasonable effort to cure any noncompliance within a reasonable period of time, and the noncompliance could not be cured within a reasonable period of time;

(2) The project, incorporating any such changes, would meet the eligibility requirements of this part;

(3) The application, as reflective of such changes, continues to score high enough to have been approved in the AHP funding round in which the application was originally scored and approved by the Bank, which is as high as the lowest ranking alternate approved for funding by the Bank if the Bank has a written policy to approve alternates for funding; and

(4) There is good cause for the modification, which may not be solely remediation of noncompliance, and the analysis and justification for the modification, including why a cure of noncompliance was not successful or attempted, are documented by the Bank in writing.

(b) *AHP subsidy increases; no delegation*—(1) *AHP subsidy increases.* A Bank's board of directors may, in its discretion, approve or disapprove requests for modifications involving an increase in AHP subsidy in accordance with the requirements of paragraph (a) of this section.

(2) *No delegation.* The authority to approve or disapprove requests for modifications involving an increase in AHP subsidy shall not be delegated by the Bank's board of directors to Bank officers or other Bank employees.

#### § 1291.30 Procedures for funding.

(a) *Disbursement of AHP subsidies to members.* (1) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(2) If an institution with an approved application for AHP subsidy loses its membership in a Bank, the Bank may disburse AHP subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(b) *Progress towards use of AHP subsidy.* A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of AHP subsidies by approved projects, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, the Bank shall make the AHP subsidies available for other AHP-eligible projects or households.

(c) *Compliance upon disbursement of AHP subsidies.* A Bank shall establish and implement policies for determining, prior to its initial disbursement of AHP subsidy for an approved project, and prior to each subsequent disbursement, that the project meets the eligibility requirements of this part and all obligations committed to in the approved AHP application. If a Bank cancels any AHP application approvals due to noncompliance with eligibility requirements of this part, the Bank shall make the AHP subsidies available for other AHP-eligible projects or households.

(d) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.* If a member is approved to receive AHP direct subsidy to write down prior to closing the principal amount or the interest rate on a loan to a project, and the amount of AHP subsidy required to maintain the debt service cost for the loan decreases from the amount of AHP subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the AHP subsidy amount accordingly. If market

interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank, in its discretion, may increase the AHP subsidy amount accordingly.

(e) *AHP outlay adjustment.* If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

(f) *Project sponsor notification of re-use of repaid AHP direct subsidy.* Prior to disbursement by a project sponsor of AHP direct subsidy repaid to and retained by such project sponsor pursuant to a subsidy re-use program authorized by the Bank under § 1291.64(b), the project sponsor shall provide written notice to the member and the Bank of its intent to disburse the repaid AHP subsidy to a household satisfying the requirements of this part and the commitments made in the approved AHP application.

**§ 1291.31 Lending and re-lending of AHP direct subsidy by revolving loan funds.**

Pursuant to written policies established by a Bank's board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP direct subsidy under its General Fund or any Targeted Funds for eligible projects and households involving both the lending of the subsidy and subsequent lending of subsidy principal and interest repayments by a revolving loan fund, provided the following requirements are met:

(a) *Submission of application.* (1) An application for AHP subsidy under this section shall include the revolving loan fund's criteria for the initial lending of the subsidy, identification of and information on a specific proposed AHP project if required in the Bank's discretion, the revolving loan fund's criteria for subsequent lending of subsidy principal and interest repayments, and any

other information required by the Bank.

(2) The information in the application shall be sufficient for the Bank to:

(i) Determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of § 1291.23; and

(ii) Evaluate the criteria for the initial lending of the subsidy, and the specific proposed project if applicable, pursuant to the scoring methodology established by the Bank pursuant to §§ 1291.25, 1291.26, and 1291.27, as applicable.

(b) *Review of application.* A Bank shall review the application for AHP subsidy to determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of § 1291.23, and shall evaluate the criteria for the initial lending of the subsidy and the specific proposed project, if applicable, pursuant to the scoring methodology established by the Bank pursuant to §§ 1291.25, 1291.26, and 1291.27, as applicable.

(c) *Initial lending of subsidy.* (1) The revolving loan fund's initial lending of the AHP subsidy shall meet the eligibility requirements of paragraph (a) of this section, shall be to projects or households meeting the commitments in the approved application for AHP subsidy, and shall be subject to the requirements in §§ 1291.15 and 1291.50, respectively.

(2) If an owner-occupied unit or project funded under this paragraph (c) is in noncompliance with the commitments in the approved AHP application, or is sold or refinanced prior to the end of the applicable AHP retention period, the required amount of AHP subsidy shall be repaid to the revolving loan fund in accordance with §§ 1291.15(a)(7), 1291.15(a)(8), and 1291.60, and the revolving loan fund shall re-lend such repaid subsidy, excluding the amounts of AHP subsidy principal already repaid to the revolving loan fund, to another owner-occupied unit or project meeting the initial lending

requirements of this paragraph (c) for the remainder of the retention period.

(d) *Subsequent lending of AHP subsidy principal and interest repayments.* (1) AHP subsidy principal and interest repayments received by the revolving loan fund from the initial lending of the AHP direct subsidy shall be re-lent by the revolving loan fund in accordance with the requirements of this paragraph (d), except that the revolving loan fund, in its discretion, may provide part or all of such repayments as nonrepayable grants to eligible projects in accordance with the requirements of this paragraph (d).

(2) The revolving loan fund's subsequent lending of AHP subsidy principal and interest repayments shall be for the purchase, construction, or rehabilitation of owner-occupied projects for households with incomes at or below 80 percent of the median income for the area, or of rental projects where at least 20 percent of the units are occupied by and affordable for households with incomes at or below 50 percent of the median income for the area, and shall meet all other eligibility requirements of this paragraph (d).

(3) A Bank may, in its discretion, require the revolving loan fund's subsequent lending of subsidy principal and interest repayments to be subject to retention period, monitoring, and recapture requirements, as defined by the Bank in its AHP Implementation Plan.

(e) *Return of unused AHP subsidy.* The revolving loan fund shall return to the Bank any AHP subsidy that will not be used according to the requirements in this section.

**§ 1291.32 Use of AHP subsidy in loan pools.**

Pursuant to written policies established by a Bank's board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP subsidy under its General Fund or any Targeted Funds for the origination of first mortgage or rehabilitation loans with subsidized interest rates to AHP-eligible households through a purchase commitment by an entity that will purchase and pool the loans, provided the following requirements are met:

(a) *Eligibility requirements.* The loan pool sponsor's use of the AHP subsidies shall meet the requirements under this section, and shall not be used for the purpose of providing liquidity to the originator or holder of the loans, or paying the loan pool's operating or secondary market transaction costs.

(b) *Forward commitment.* (1) The loan pool sponsor shall purchase the loans pursuant to a forward commitment that identifies the loans to be originated with interest-rate reductions as specified in the approved application for AHP subsidy to households with incomes at or below 80 percent of the median income for the area. Both initial purchases of loans for the AHP loan pool and subsequent purchases of loans to substitute for repaid loans in the pool shall be made pursuant to the terms of such forward commitment and subject to time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank's agreement with the loan pool sponsor, which shall not exceed one year from the date of approval of the AHP application.

(2) As an alternative to using a forward commitment, the loan pool sponsor may purchase an initial round of loans that were not originated pursuant to an AHP-specific forward commitment, provided that the entities from which the loans were purchased are required to use the proceeds from the initial loan purchases within time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank's agreement with the loan pool sponsor, which shall not exceed one year from the date of approval of the AHP application. The proceeds shall be used by such entities to assist households that are income-eligible under the approved AHP application during subsequent rounds of lending, and such assistance shall be provided in the form of a below-market AHP-subsidized interest rate as specified in the approved AHP application.

(c) Each AHP-assisted owner-occupied unit and rental project receiving AHP direct subsidy or a subsidized advance shall be subject to the requirements of §§ 1291.15, 1291.50, and 1291.60, respectively.

(d) Where AHP direct subsidy is being used to buy down the interest rate of a loan or loans from a member or other party, the loan pool sponsor shall use the full amount of the AHP direct subsidy to buy down the interest rate on a permanent basis at the time of closing on such loan or loans.

### **Subpart D—Homeownership Set-Aside Programs**

#### **§ 1291.40 Establishment of programs.**

A Bank may establish, in its discretion, one or more Homeownership Set-Aside Programs pursuant to the requirements of this part.

#### **§ 1291.41 Eligible applicants.**

A Bank shall accept applications for AHP direct subsidy under its Homeownership Set-Aside Programs only from institutions that are members of the Bank at the time the application is submitted to the Bank.

#### **§ 1291.42 Eligibility requirements.**

A Bank's Homeownership Set-Aside Programs shall meet the eligibility requirements set forth in this section. A Bank may not adopt additional eligibility requirements for its Homeownership Set-Aside Programs except for eligible households pursuant to paragraph (b) of this section.

(a) *Member allocation criteria.* AHP direct subsidies shall be provided to members pursuant to allocation criteria established by the Bank in its AHP Implementation Plan.

(b) *Eligible households.* Members shall provide AHP direct subsidies only to households that:

(1) Have incomes at or below 80 percent of the median income for the area at the time the household is accepted for enrollment by the member in the Bank's Homeownership Set-Aside Programs, with such time of enrollment by the member defined by the Bank in its AHP Implementation Plan;

(2) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization experienced in homebuyer or homeowner counseling, in the case of households that are first-time homebuyers; and

(3) Are first-time homebuyers or households receiving AHP subsidy for owner-occupied rehabilitation, in the case of households receiving subsidy pursuant to the one-third set-aside funding allocation requirement in § 1291.12(b), and meet such other eligibility criteria that may be established by the Bank in its AHP Implementation Plan, such as a matching funds requirement, homebuyer or homeowner counseling requirement for households that are not first-time homebuyers, or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort.

(c) *Maximum grant limit.* Members shall provide AHP direct subsidies to households as a grant, in an amount up to a maximum established by the Bank, not to exceed \$22,000 per household, which limit shall adjust upward on an annual basis in accordance with increases in FHFA's House Price Index (HPI). In the event of a decrease in the HPI, the subsidy limit shall remain at its then-current amount until the HPI increases above the subsidy limit, at which point the subsidy limit shall adjust to that higher amount. FHFA will notify the Banks annually of the maximum subsidy limit, based on the HPI. A Bank may establish a different maximum grant limit, up to the maximum grant limit, for each Homeownership Set-Aside Program it establishes. A Bank's maximum grant limit for each such program shall be included in its AHP Implementation Plan, which limit shall apply to all households in the specific program for which it is established.

(d) *Eligible uses of AHP direct subsidy.* Households shall use the AHP direct subsidies to pay for down payment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied unit, including a condominium or cooperative housing unit or manufactured housing, to be used as the household's primary residence.

(e) *Retention agreement.* An owner-occupied unit purchased, or purchased in conjunction with rehabilitation, using AHP direct subsidy, shall be subject to

## § 1291.43

## 12 CFR Ch. XII (1–1–25 Edition)

a five-year retention agreement described in § 1291.15(a)(7).

(f) *Financial or other concessions.* The Bank may, in its discretion, require members and other lenders to provide financial or other concessions, as defined by the Bank in its AHP Implementation Plan, to households in connection with providing the AHP direct subsidy or financing to the household.

(g) *Financing costs.* The rate of interest, points, fees, and any other charges for all loans made in conjunction with the AHP direct subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(h) *Counseling costs.* The AHP direct subsidies may be used to pay for counseling costs only where:

(1) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(2) The cost of the counseling has not been covered by another funding source, including the member.

(i) *Cash back to household.* A member may provide cash back to a household at closing on the mortgage loan in an amount not exceeding \$250, as determined by the Bank in its AHP Implementation Plan, and a member shall use any AHP direct subsidy exceeding such amount that is beyond what is needed at closing for closing costs and the approved mortgage amount as a credit to reduce the principal of the mortgage loan or as a credit toward the household's monthly payments on the mortgage loan.

### § 1291.43 Approval of AHP applications.

A Bank shall approve applications for AHP direct subsidy under its Homeownership Set-Aside Programs in accordance with the Bank's criteria governing the allocation of funds.

### § 1291.44 Procedures for funding.

(a) *Disbursement of AHP direct subsidies to members.* (1) A Bank may disburse AHP direct subsidies under its Homeownership Set-Aside Programs only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(2) If an institution with an approved application for AHP direct subsidy loses its membership in a Bank, the Bank may disburse AHP direct subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP direct subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(b) *Reservation of Homeownership Set-Aside Program subsidies.* A Bank shall establish and implement policies for reservation of set-aside subsidies for households enrolled in the Bank's Homeownership Set-Aside Programs. The policies shall provide that set-aside subsidies be reserved no more than two years in advance of the Bank's time limit in its AHP Implementation Plan for draw-down and use of the subsidies by the household and the reservation of subsidies be made from the allocation for the Homeownership Set-Aside Programs for the year in which the Bank makes the reservation.

(c) *Progress towards use of AHP direct subsidy.* A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of the AHP direct subsidies by eligible households, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, it shall make the AHP direct subsidies available for other applicants for AHP direct subsidies under the Homeownership Set-Aside Programs or for other AHP-eligible projects.

## Subpart E—Monitoring

### § 1291.50 Monitoring under the General Fund and Targeted Funds.

(a) *Initial monitoring policies for owner-occupied and rental projects.* A Bank shall adopt written policies pursuant to which the Bank shall monitor each AHP owner-occupied project and rental project approved under its General Fund and any Targeted Funds prior to, and within a reasonable period of time



## Federal Housing Finance Agency

§ 1291.50

after, project completion to verify, at a minimum, satisfaction of the requirements in this section.

(1) *Satisfactory progress.* The Bank shall determine that:

(i) The project is making satisfactory progress towards completion, in compliance with the commitments made in the approved AHP application, Bank policies, and the requirements of this part; and

(ii) Following completion of the project, satisfactory progress is being made towards occupancy of the project by eligible households.

(2) *Project sponsor or owner certification, rent roll and other documentation; backup and other project documentation.* Within a reasonable period of time after project completion, the Bank shall review a certification from the project sponsor or owner, the project rent roll (which includes household incomes and rents), and any other documentation to verify that the project meets the following requirements, at a minimum:

(i) The AHP subsidies were used for eligible purposes according to the commitments made in the approved AHP application;

(ii) The household incomes and rents comply with the income targeting and rent commitments made in the approved AHP application;

(iii) The project's costs were reasonable in accordance with the Bank's project cost guidelines, and the AHP subsidies were necessary for the completion of the project as currently structured, as determined pursuant to § 1291.24(a)(4);

(iv) Each AHP-assisted unit of an owner-occupied project and rental project is subject to an AHP retention agreement that meets the requirements of § 1291.15(a)(7) and (8), respectively; and

(v) The services and activities committed in the approved AHP application have been provided.

(3) *Back-up and other project documentation.* The Bank's written monitoring policies shall include requirements for:

(i) Bank review within a reasonable period of time after project completion of back-up project documentation regarding household incomes and rents

(not including the rent roll) maintained by the project sponsor or owner, except for projects that received funds from other federal, state or local government entities whose programs meet the requirements in paragraphs (b)(1) and (2) of this section as specified in separate FHFA guidance, or projects that have also been allocated LIHTC; and

(ii) Maintenance and Bank review of other project documentation in the Bank's discretion.

(4) *Sampling plan.* The Bank shall not use a sampling plan to select the projects to be monitored under this paragraph (a), but may use a reasonable risk-based sampling plan to review the back-up project documentation.

(b) *Long-term monitoring—reliance on other governmental monitoring for certain rental projects.* For completed AHP rental projects that also received funds from federal, state, or local government entities other than LIHTC, a Bank may, in its discretion, for purposes of long-term AHP monitoring under its General Fund and any Targeted Funds, rely on the monitoring by such entities of the income targeting and rent requirements applicable under their programs, provided that the Bank can show that:

(1) The compliance profiles regarding income targeting, rent, and retention period requirements of the AHP and the other programs are substantively equivalent;

(2) The entity has demonstrated and continues to demonstrate its ability to monitor the project;

(3) The entity agrees to provide reports to the Bank on the project's incomes and rents for the full 15-year AHP retention period; and

(4) The Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank's monitoring policies.

(c) *Long-term monitoring policies for rental projects.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraph (b) of this section, pursuant to written policies established by the Bank, the Bank shall monitor completed AHP rental projects approved under its General Fund and any Targeted Funds, commencing in

## § 1291.51

## 12 CFR Ch. XII (1–1–25 Edition)

the second year after project completion through the AHP 15-year retention period, to verify, at a minimum, satisfaction of the requirements in this section.

(1) *Annual project sponsor or owner certifications; backup and other project documentation.* A Bank's written monitoring policies shall include requirements for:

(i) Bank review of all annual certifications to the Bank by project sponsors or owners, other than sponsors or owners of projects that have been allocated LIHTCs, that household incomes and rents are in compliance with the commitments made in the approved AHP application during the AHP 15-year retention period, along with information on the ongoing financial viability of the project, including whether the project is current on its property taxes and loan payments, its vacancy rate, and whether it is in compliance with its commitments to other funding sources;

(ii) Bank review of back-up project documentation regarding household incomes and rents, including the rent rolls, maintained by the project sponsor or owner, except for projects that also received funds from other federal, state or local government entities whose programs meet the requirements in paragraphs (b)(1) and (2) of this section as specified in separate FHFA guidance, or projects that have been allocated LIHTC, provided that the Bank shall review any LIHTC noncompliance notices received from project owners pursuant to §1291.15(a)(5)(ii) during the AHP 15-year retention period; and

(iii) Maintenance and Bank review of other project documentation in the Banks' discretion.

(2) *Risk factors and other monitoring—*

(i) *Risk factors; other monitoring.* A Bank's written monitoring policies shall take into account risk factors such as the amount of AHP subsidy in the project, type of project, size of project, location of project, sponsor experience and performance, and any monitoring of the project provided by a federal, state, or local government entity.

(ii) *Risk-based sampling plan.* A Bank may use a reasonable, risk-based sampling plan to select the rental projects

to be monitored under this paragraph (c), and to review the back-up and any other project documentation. The risk-based sampling plan and its basis shall be in writing.

(d) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an approved AHP application for both initial and long-term AHP monitoring purposes under a Bank's General Fund and any Targeted Funds, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged to a household remains affordable, as defined in §1291.1, for the household occupying the unit.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.51 Monitoring under Homeownership Set-Aside Programs.

(a) *Adoption and implementation.* Pursuant to written policies adopted by a Bank, the Bank shall monitor compliance with the requirements of its Homeownership Set-Aside Programs, including monitoring to determine, at a minimum, whether:

(1) The AHP subsidy was provided to households meeting all applicable eligibility requirements in §1291.42(b) and the Bank's Homeownership Set-Aside Program policies; and

(2) All other applicable eligibility requirements in §1291.42 and the Bank's Homeownership Set-Aside Program policies are met, including that the AHP-assisted units are subject to retention agreements, as required under §1291.15(a)(7), where the AHP subsidy was used for purchase of the unit, or for purchase of the unit in conjunction with rehabilitation.

(b) *Member certifications; back-up and other documentation.* The Bank's written monitoring policies shall include requirements for:

(1) Bank review of certifications by members to the Bank, prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in §1291.42;

(2) Bank review of back-up documentation regarding household incomes maintained by the member; and

(3) Maintenance and Bank review of other documentation in the Bank's discretion.

(c) *Sampling plan.* The Bank may use a reasonable sampling plan to select the households to be monitored, and to review the back-up and any other documentation received by the Bank, but not the member certifications required in paragraph (b) of this section. The sampling plan and its basis shall be in writing.

### Subpart F—Remedial Actions for Noncompliance

#### § 1291.60 Remedial actions for project noncompliance.

(a) *Scope.* This section sets forth the requirements applicable to the Banks in the event of noncompliance by an AHP-assisted project with the commitments made in its application for AHP subsidies and the requirements of this part, including any use of AHP subsidy by the project sponsor or owner for purposes other than those committed to in the AHP application. This section does not apply to individual AHP-assisted households or to the sale or refinancing by such households of their homes.

(b) *Elimination of project noncompliance—(1) Cure.* In the event of project noncompliance, the Bank shall request that the project sponsor or owner make a reasonable effort to cure the noncompliance within a reasonable period of time. If the noncompliance cannot be cured within a reasonable period of time, the requirements for project modification in paragraph (b)(2) of this section shall apply. If the noncompliance is cured within a reasonable period of time, the Bank shall not require the project sponsor or owner to repay AHP subsidy to the Bank.

(2) *Project modification.* If the project sponsor or owner cannot cure the noncompliance within a reasonable period of time, the Bank shall determine whether the circumstances of the noncompliance can be eliminated through a modification of the terms of the AHP application pursuant to § 1291.29. When the circumstances of the noncompli-

ance can be eliminated through a modification, the Bank shall approve the modification and shall not require the project sponsor or owner to repay AHP subsidy to the Bank.

(c) *Reasonable collection efforts—(1) Demand for repayment.* If the circumstances of a project's noncompliance cannot be eliminated through a cure or modification, the Bank, or the member if delegated the responsibility, shall make a demand on the project sponsor or owner for repayment of the full amount of the AHP subsidy not used in compliance with the commitments in the AHP application or the requirements of this part (plus interest, if appropriate). If the noncompliance is occupancy by households with incomes exceeding the income-targeting commitments in the AHP application, the amount of AHP subsidy due is calculated based on the number of units in noncompliance, the length of the noncompliance, and the portion of the AHP subsidy attributable to the noncompliant units.

(2) *Settlement.* (i) If the demand for repayment of the full amount due is unsuccessful, the Bank, or the member if delegated the responsibility and in consultation with the Bank, shall make reasonable efforts to collect the subsidy from the project sponsor or owner, which may include settlement for less than the full amount due, taking into account factors such as the financial capacity of the project sponsor or owner, assets securing the AHP subsidy, other assets of the project sponsor or owner, the degree of culpability of the project sponsor or owner, and the extent of the Bank's or member's collection efforts.

(ii) The settlement with the project sponsor or owner must be supported by sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance, including any factors in paragraph (c)(2)(i) of this section that were considered in reaching the settlement.

#### § 1291.61 Recovery of subsidy for member noncompliance.

A Bank shall recover from a member the amount of any AHP subsidy (plus

## § 1291.62

## 12 CFR Ch. XII (1–1–25 Edition)

interest, if appropriate) not used in compliance with the commitments in the member's AHP application or the requirements of this part as a result of the actions or omissions of the member.

### § 1291.62 Bank reimbursement of AHP fund.

(a) *By the Bank.* A Bank shall reimburse its AHP fund in the amount of any AHP subsidies (plus interest, if appropriate) not used in compliance with the commitments in an AHP application or the requirements of this part as a result of the actions or omissions of the Bank.

(b) *By FHFA order.* FHFA may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(1) The Bank has failed to reimburse its AHP fund as required under paragraph (a) of this section; or

(2) The Bank has failed to recover the full amount of AHP subsidy due from a project sponsor, project owner, or member pursuant to the requirements of §§1291.60 and 1291.61, and has not shown that such failure is reasonably justified, considering factors such as those in §1291.60(c)(2)(i).

### § 1291.63 Suspension and debarment.

(a) *At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(b) *At FHFA's initiative.* FHFA may order a Bank to suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

### § 1291.64 Use of repaid AHP subsidies.

(a) *Use of repaid AHP subsidies for other AHP-eligible projects or households.* Except as provided in paragraph (b) of this section, amounts of AHP subsidy,

including any interest, repaid to a Bank pursuant to this part shall be made available by the Bank for other AHP-eligible projects or households.

(b) *Re-use of repaid AHP direct subsidies in same project.* AHP direct subsidy, including any interest, repaid to a member or project sponsor, as applicable, under a Bank's General Fund and any Targeted Funds may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such parties, or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, after consultation with its Advisory Council, in its AHP Implementation Plan, provided all of the following requirements are satisfied:

(1) The member or the project sponsor originally provided the AHP direct subsidy as down payment, closing cost, rehabilitation, or interest rate buy down assistance to an eligible household for purchase, or for purchase in conjunction with rehabilitation, of an owner-occupied unit pursuant to an approved AHP application;

(2) The AHP direct subsidy, including any interest, was repaid to the member or project sponsor as a result of a sale, transfer, or assignment of title or deed of the unit prior to the end of the retention period to a subsequent purchaser that is not a low- or moderate-income household; and

(3) The repaid AHP direct subsidy is made available by the member or project sponsor, within the period of time specified by the Bank in its AHP Implementation Plan, to another AHP-eligible household for purchase, or for purchase in conjunction with rehabilitation, of an owner-occupied unit in the same project in accordance with the terms of the approved AHP application.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

### § 1291.65 Transfer of Program administration.

Without limitation on other remedies, FHFA, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's

## Federal Housing Finance Agency

## § 1292.1

members, under such terms and conditions as FHFA may prescribe.

### Subpart G—Affordable Housing Reserve Fund

#### § 1291.70 Affordable Housing Reserve Fund.

(a) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 1291.10(a), 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by FHFA. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion shall be deposited in the Affordable Housing Reserve Fund.

(b) *Use or commitment of AHP funds.* Approval of applications for AHP funds from members sufficient to exhaust the amount a Bank is required to contribute pursuant to § 1291.10(a) shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP funds that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

(1) AHP application alternates in the Bank's final funding round of the year for its General Fund or any Targeted Funds, if the Bank has a policy to approve alternates for funding under such Funds;

(2) Pending applications for funds under the Bank's Homeownership Set-Aside Programs, if any; and

(3) Project modifications for AHP subsidy increases approved by the Bank pursuant to the requirements of this part.

(c) *Carryover of insufficient amounts.* Such insufficient amounts as described in paragraph (b) of this section shall be carried over by the Bank for use or commitment in the following year in its General Fund, any Targeted Funds, or any Homeownership Set-Aside Programs.

## PART 1292—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

Sec.

1292.1 Definitions.

1292.2 Scope.

1292.3 Purpose.

1292.4 Targeted Community Lending Plan.

1292.5 Community Investment Cash Advance Programs.

1292.6 Reporting.

1292.7 Documentation.

AUTHORITY: 12 U.S.C. 1430, 4511(b)(2).

SOURCE: 78 FR 2328, Jan. 11, 2013, unless otherwise noted.

### § 1292.1 Definitions.

As used in this part:

*Champion Community* means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of the USDA as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

*CICA program or Community Investment Cash Advance program* means:

(1) A Bank's AHP;

(2) A Bank's CIP;

(3) A Bank's RDF program or UDF program using any combination of the targeted beneficiaries and targeted income levels specified in § 1292.1 of this part; and

(4) Any other advance or grant program offered by a Bank using targeted beneficiaries and targeted income levels other than those specified in § 1292.1 of this part, established by the Bank with the prior approval of FHFA.

*Economic development projects* means:

(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and

(2) Public or private infrastructure projects, such as roads, utilities, and sewers.

*Family* means one or more persons living in the same dwelling unit.

*Housing projects* means projects or activities that involve the purchase, construction, rehabilitation or refinancing (subject to § 1292.5(c) of this part) of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or