

Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1).

(8) *Savings and loan holding company* means a savings and loan holding company as defined in § 574.2(q) of this chapter.

(b) *Notice.* Prior to divestiture of a savings association, an acquirer that is subject to a capital maintenance obligation shall provide written notice of such divestiture to the Office on Form DV, including the certifications required therein. If the acquirer is unable to provide such certifications, the acquirer may submit alternative certifications addressing the subjects of each certification, in a form acceptable to the Office.

(c) *Determination of deficiency.* Upon receipt of the notice required under paragraph (b) of this section, the Office will conduct a full or limited-scope examination of the savings association, as deemed appropriate by the District Director, to ascertain whether a deficiency exists as of the date of the examination. If such examination is not completed within 90 days of the notice required under paragraph (b) of this section, or the Office has not communicated the results of the examination to the acquirer within such period, the deficiency, if any, shall be calculated based on the savings association's most recent Thrift Financial Report, filed prior to the notice of divestiture, *provided, however,* that if the failure to complete an examination within 90 days is caused by any failure of the association or the acquirer to cooperate, the 90 day period may be extended by the Director of the Office for additional periods, including such time as may be needed to base a deficiency on the results of a completed examination. Notwithstanding any other provision of this section, if the Office determines that fraud or misrepresentation occurred during the course of an examination conducted to determine the association's capital, compliance with the procedures set forth in this section shall not be deemed to have extinguished an acquirer's capital maintenance obligation and the Office will seek appropriate enforcement remedies.

(d) *Divestiture.* (1) In the event that the examination conducted under paragraph (c) of this section indicates

that no deficiency exists, the acquirer may divest control of the savings association to which the capital maintenance obligation relates upon receiving written notice of the results of the examination. Where the examination was not completed or the results not communicated to the acquirer in a timely manner, and the savings association's most recent Thrift Financial Report filed before the filing of the notice of divestiture indicates no deficiency existed at that time, the acquirer may divest control of the savings association to which the capital maintenance obligation relates 91 days after the receipt of the notice by the Office, or such longer period as established under paragraph (c) of this section.

(2) In the event that a deficiency exists, the acquirer may not divest control of the savings association to which the capital maintenance obligation relates unless:

(i) The acquirer provides the office with an agreement to infuse into the savings association the amount necessary to remedy the deficiency and make arrangements, satisfactory to the Office, to assure payment of the deficiency; or

(ii) The deficiency is satisfied.

(3) An acquirer may divest control of a savings association to which a capital maintenance obligation relates prior to the completion of the examination conducted under paragraph (c) of this section if the acquirer provides the Office with an agreement to infuse into the savings association the amount necessary to remedy the deficiency and makes arrangements, satisfactory to the Office, to assure payment of any deficiency.

(e) *Effect of regulation on terms of capital maintenance obligations.* This regulation does not supercede any liability imposed by a capital maintenance obligation.

(f) *Exceptions.* The Director of the Office may, upon application or upon his or her own initiative, grant or deny exemptions from this section.

Dated: January 4, 1990.

By the Office of Thrift Supervision.

M. Danny Wall,
Director.

[FR Doc. 90-4760 Filed 3-1-90; 8:45 am]
BILLING CODE 6720-01-4

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 90-29]

Affordable Housing Program

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule; request for comments; Notice of open application periods and deadlines.

SUMMARY: The Federal Housing Finance Board ("Board") is adopting interim regulations for the operation of the Affordable Housing Program by the Federal Home Loan Banks ("Banks") in order to implement the provisions of Section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA" Pub. L. No. 101-73, 103 Stat. 183, 423-426), which requires the establishment of an Affordable Housing Program ("Program" or "AHP"). The Program is designed to expand and strengthen the Banks' and their member institutions' support for affordable housing. The Program will help meet the most critical community investment and affordable housing needs.

DATES: Effective March 2, 1990.

Comments must be submitted on or before May 1, 1990.

Applications for Affordable Housing Program funds must be made between March 2, 1990 and May 1, 1990 for the initial 1990 AHP funding and between July 17, 1990 and August 31, 1990 for the final 1990 AHP funding.

ADDRESSES: Comments may be mailed to Federal Housing Finance Board, Secretariat, John Ghizzoni, 1777 F Street, NW., Washington, DC 20006, where comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Office of Housing Finance Programs, (202) 906-6211 or Stephen D. Johnson, Attorney Advisor, Office of Housing Finance Programs, (202) 906-6318, Federal Housing Finance Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. General

FIRREA added section 10(j) to the Federal Home Loan Bank Act of 1932 ("FHLB Act"—12 U.S.C. 1430(j)), which provides that, pursuant to regulations promulgated by the Board, each Bank must establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System engaged in lending for long-term, very low-, low- and

erate-income, owner-occupied and affordable rental housing at subsidized interest rates. The Program that is established under FIRREA is designed to strengthen the Banks' and their member institutions' support for affordable housing.

The Board believes that the Banks and member institutions have an affirmative responsibility to provide financing that meets prudent, flexible, and innovative underwriting standards for very low-, low- and moderate-income housing for both owner occupants and tenants.

The Board has elected to operate the Program as a series of twelve District-wide competitions. This reflects the statutory language that directs each Bank to establish a Program. The statute further specifies the dollar contribution of each Bank and establishes a procedure for the use of the remaining funds if any Bank fails to use the full amount of its statutory contributions.

However, while the Board has elected to operate the Program as a series of semiannual District-wide competitions, the regulations create an overarching uniformity by specifying a set of objectives and relative weights, the net result of which should be a consistent evaluation of projects and the attainment of national goals. The Board will monitor the consistency of project evaluation in two ways: (1) By evaluating the overall scoring across Districts when it reviews the projects submitted by the Banks and (2) by conducting post audits. While the Board believes it has given the Banks sufficient guidance on how to evaluate applications, it invites comments on any and all aspects of the evaluation process.

The Board anticipates that the Banks will fulfill their Program obligations primarily through the use of subsidized advances pursuant to the Federal Home Loan Bank System Credit Program ("Advances"). The Banks may also fulfill their obligations through the use of direct subsidies or other types of assistance to members.

In order to promote the use of the Program, the Banks are encouraged to explore all possible ways of reaching the targeted households and to encourage wide participation in the Program among their members. Furthermore, the Program is to be used in addition to the existing housing programs of the Banks, principally the Community Investment Program ("CIP").

As a means to foster broad-based support, the Board recognizes the value of encouraging the establishment of effective public/private partnerships and leveraging other sources of funds.

The Board anticipates that funds provided under this Program may be used in conjunction with other sources of funds such as the CIP, the low-income housing tax credit program, as well as other federal, state, or local and private assistance programs. The Board notes, however, while other sources of funding may be used in conjunction with the Program, the Board will consider the subsidies provided by these other funding sources in determining the maximum subsidy allowed under this Program.

The Board is aware of a variety of these programs that can be used to complement the Program and seeks to establish implementing regulations that will facilitate and maximize program integration. The Board encourages innovative efforts to provide subsidized credit for targeted households. Banks will provide technical assistance and guidance to their members on a wide range of possible initiatives and funding arrangements. Some examples of such arrangements are provided below.

1. *Securitization*—The securitization of loans made under the Program can broaden investor participation in very low-, low- and moderate-income housing finance. If successful, securitization can create a secondary market for these types of housing loans. There are a number of approaches available for accomplishing this securitization.

A member could borrow Program advances to fund eligible subsidized loans and swap the loans into mortgage-backed securities created by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The Bank then could purchase the mortgage-backed security at par, allowing the member to use the sale proceeds to repay the Program advance. The difference between the par value of a security and its market value represents the Bank's subsidy.

Linking the Program with securitization and the secondary market offers a number of challenges. For example, successful packaging often requires credit enhancements to give the securities the necessary investment-grade rating. These enhancements include private mortgage insurance (either on individual loans or loan pools), the use of senior/subordinated structures, or recourse arrangements. Each of these enhancements entails a cost and a risk for the provider of the enhancement.

The Board realizes that current secondary-market requirements and underwriting criteria may constrain the financing of affordable housing through securitization. The Board will work to assist in developing and

institutionalizing creative solutions in such areas.

2. *Consortia/Participations*—Lender participation in the Program may involve a single project or groups of projects that involve several participating lenders. This involvement may take many forms including the development of lender consortia, jointly-owned service corporations, purchase of participation interests, or the purchase of mortgage-backed securities issued by special-purpose mortgage conduit corporations. Many of the successful public private partnerships in affordable housing already operate with multi-lender involvement.

3. *Public Financing Sources*—Public financing sources provide additional local, state, and federal funds. These range from the federal housing tax credit programs to the innovative use of local resources. A combination of these financing vehicles will assist in serving the Program's targeted households. These programs, most of which have already been used in conjunction with the CIP, provide excellent opportunities to reach even lower income households.

Low-income housing tax credits, authorized by the Tax Reform Act of 1986, are distributed through the states, often through state housing finance agencies. The program offers owner/investors a credit against federal income taxes based on the cost of acquiring, rehabilitating, or constructing low-income rental housing. The amount of tax credit received depends on the income level served.

Mortgage revenue bonds are issued by state and local housing finance agencies at below-market rates because the interest is tax exempt for federal-tax purposes. This interest savings is passed on to the homebuyer in the form of lower mortgage rates and is used as a means for financing moderate-income housing. The attractiveness of this source, however, has been significantly reduced by the Tax Reform Act of 1986.

Mortgage credit certificates (MCCs) authorize the borrower to take a direct tax credit every year against his/her federal tax liability until an equivalent of 20 percent of indebtedness is taken as a credit. All state housing finance agencies have the authority to establish these certificates on an optional basis. However, they count against a state's volume cap for mortgage-revenue bonds. Instead of using tax-exempt bonds to finance mortgage originations, state agencies can issue MCCs directly to the borrower after the mortgage is originated by the lender. This program is particularly useful for first-time homebuyer programs.

The Department of Housing and Urban Development ("HUD") offers several programs that may be used in conjunction with the Board's Program. These include:

Community Development Block Grant Program—a multipurpose community program that places significant emphasis on activities that benefit low- and moderate-income households. Housing rehabilitation, public facilities, and economic development are a few of the areas emphasized by this program.

Rental Rehabilitation Program—combines the resources of private investors, lending institutions, and the federal government to provide lower-cost rental units.

Section 8 Housing Voucher Program—provides housing vouchers to low-income tenants to cover a portion of the rent for decent housing units of their choice. Section 8 has also been used with limited-equity cooperatives. This program can be quite effective when used in conjunction with low-income tax credits.

In addition to the HUD programs listed above, other government agencies such as the Farmers Home Administration, the Veterans Administration, and the Small Business Administration, offer programs that provide assistance to low- and moderate-income households and communities.

B. Analysis of the Regulation

1. Establishment of the Program—The board of directors of each Federal Home Loan Bank must adopt an implementing plan for the Program established by FIRREA and implemented in these regulations. The regulations require the Banks to submit their plan to the Board prior to the end of the application period.

2. Use of subsidized advances and direct subsidies—As required by the FIRREA, the regulations provide for the Banks to subsidize the interest rates on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied and rental housing. Additionally, since the Board believes the Banks should maximize the resources provided under the Program through the innovative use of Program subsidies, the regulations also permit the use of direct subsidies and other types of subsidized assistance.

The regulations define subsidy as the dollar amount of direct cash payments to the Program or the net present value of the foregone cash flows to the Bank resulting from making funds available under the Program at rates below the cost of funds. Defining the subsidy to

equal the present value of future cash flows provides for an upfront funding of future obligations. The Board believes it is appropriate to adopt this funding approach to the Program; it is also in accord with generally accepted accounting principals. Upfront funding of the subsidy commitment ensures that adequate funding will be available in future years and allows for a steady stream of new projects each year to meet changing national and regional policy objectives.

While an alternative program that used annual funding of the subsidy commitment would allow an increased number of projects to be funded in the first year, such an approach could create substantial funding and administrative problems.

For example, given the expected volatility in annual contributions by the Banks to the Program, funding shortfalls could occur. Furthermore, although this approach would allow significantly more projects to be funded the first year, no new projects could be funded in subsequent years until the loans on the original projects were repaid.

The design of the Program is such that members are encouraged to participate in projects that they might not otherwise consider. For example, the subsidy could act, in some instances, as the mechanism that will allow the member to make a loan it might not otherwise have made, priced at a level consistent with the ultimate borrower's ability to pay, while still making an attractive spread.

The Board expects that, with the exception of pricing, the terms and conditions of the advances offered by the Banks to members as part of the Program will conform to the Banks, credit underwriting and collateralization standards. The Board also expects that the members, in making loans under the Program, will apply prudent underwriting standards. Members are required to maintain safe and sound lending practices consistent with the requirements of their primary regulator to ensure that Program loans are within acceptable risk levels.

As required by FIRREA, the regulations describe two broad purposes for Affordable Housing Program (AHP) subsidy use: (1) To finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low- and moderate-income households; and (2) to finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

While the Board encourages financing arrangements that may be used for leveraging the funds to be allocated under the Program, it realizes that some of these innovative concepts and financing arrangements may not be familiar to some members. Because of the Board's concern for safety and soundness and prudent lending, institutions not familiar with these financing techniques are encouraged to consider participating with experienced lenders.

3. Application for Funding—AHP funds will be made available on either on an annual or a semiannual basis. In the case of semiannual offerings, the initial funding during the first half of the calendar year shall not exceed 60% of the AHP funds for the year; the balance of AHP funds would be available in the second and final offering during the second half of the calendar year. Each Bank is to notify its members of the amount of annual Program funds available for the District, whether funding will be on an annual or semiannual basis, and begin accepting applications for Program funds, by January 15 (and again on July 15 for semiannual offerings) of each year. The Board will also publish notice of each Bank's available AHP funds. The deadline for submitting applications to the Bank will be 45 days later. Those applications receiving the highest ratings will be forwarded by the Bank to the Board not later than 45 days after the close of the application period. The Board will announce final funding decisions within 30 days thereafter. For 1990, however, the application deadline for the first AHP funding is May 1, 1990.

To ensure that Program subsidies are allocated for the priority uses intended and the specific households targeted, the regulations require that a member's application for a subsidized advance, direct subsidy, or other assistance include a description of the project and its conformity with Program objectives. The application must also include: a description of the feasibility of the project including local market conditions; the qualifications of the sponsor, if any; the calculation of the subsidy requested; and certifications that funding received will not be used for arbitrage purposes, that the project will not receive subsidy in excess of that allowed by the FHLB Act or the regulations and that the subsidy shall only be used for authorized purposes. The application must also include a description of the long-term monitoring techniques that will be used by the member to ensure the appropriate use of

program funds and the recapture of any unused subsidy.

4. *Project Scoring and Funding*—The Program will operate through a nationally administered series of District-wide competitions. There will not be special allocations for states or jurisdictions. Each Bank will evaluate applications on the basis of a number of criteria or objectives that are included in the regulation. These objectives reflect the broad goals of reaching the targeted households, providing maximum assistance per subsidy dollar, and encouraging innovation, community involvement, and community stability.

The regulations identify seven priorities for the Program subsidies:

(1) Projects that finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low- and moderate-income households in that priority order; or

(2) Projects that finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States including those held by the U.S. Department of Housing and Urban Development, the Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, any state or political subdivision of any state, any local housing authority, or state housing agency; or

(5) Projects that empower the poor through resident management, urban homesteading and similar programs; or

(6) Projects that promote fair housing;

or

(7) Projects that provide permanent housing for the homeless.

Each Bank will first separate the submitted projects into two groups: (1) Those that meet at least three of the priorities identified in the regulation and (2) those that meet fewer than three of the priorities. Projects in the first group will be rated before projects in the second group. Second group projects will only be rated and forwarded to the Board if there are insufficient applications in the first group. The Banks should consider, however,

projects not forwarded to the Board for assistance under other programs as the Community Investment Program (CIP).

To ensure that the projects funded conform to Program objectives, the Banks will evaluate all projects using the 100 point scoring system described in the regulation. The Banks will rank order the applications within each of the groups identified above based on the sum of the point totals for the applications.

The scoring system divides the Program objectives into three groups. The total possible score a project may receive is 100 points. The first, and most important objective is the consistency of the project with the priorities identified in the regulation. Projects may receive up to 25 points for this objective, with a project's actual point total reflecting its consistency with, or potential for achievement of, the priorities.

The second group of objectives includes: (1) Targeting—the extent to which the project targets households below the statutory maximum, especially very-low income households; (2) long-term retention—the potential for long-term retention of owner-occupied and rental housing affordable for very low-, low- and moderate-income households; and (3) effectiveness—the effective use of Program dollars, i.e., the number of units to be built or mortgages to be granted per AHP subsidy dollar, including the extent to which the project is able to draw upon other sources of funds and programs designed to benefit targeted households. The Bank may award each project up to 15 points per objective in this group.

The third group of objectives includes: (1) Community involvement—the extent to which the project involves non-profit or community organizations; (2) community stability—the extent to which the project maximizes community stability and minimizes the displacement of very low-, low- and moderate-income households; and (3) innovation—the use of innovative and experimental non-financial and financial approaches toward providing affordable housing for very-low, and low- and moderate-income households. The Bank may award a project up to 10 points for each objective in this group.

After the Bank has evaluated applications from members, the Bank will forward to the Board for final funding consideration those projects receiving the highest overall rankings. To ensure an adequate pool of projects for Board consideration, the regulations require each Bank to forward to the Board applications from the highest ranking projects sufficient to exhaust the funds available to the Bank under the

Program plus the next four highest-ranking projects. The regulations provide, however, that if in the Board's opinion there is an insufficient number of applications from any Bank, the Board may request that the Bank submit additional eligible applications.

The regulations also require the Bank to submit a summary of each project to the Board. The summary shall include a brief description of the project, the amount of subsidy requested, a description of how the member and Bank will monitor the project, a description of the provisions for recapture of the subsidy, and the reason for the points awarded for each of the enumerated objectives.

The Board will review the projects submitted by each Bank to ensure national consistency with the Program's stated goals, priorities, and objectives. Based on this review and the rankings submitted by the Banks, the Board will make final funding decisions.

5. *Reporting*—To facilitate reporting, the Board is designing and will implement at the outset of the Program a comprehensive computerized AHP reporting system. The AHP application will be entered into the system upon receipt by the Bank. The entry will be updated to include the disposition of the application and the progress of the project if the application is approved and funded.

Members that receive subsidies will be required to file periodic reports with the Bank until the subsidy has been fully used or repaid. The reports will, at a minimum, describe the manner in which the member has used the proceeds of the subsidy and contain a certification that the subsidy continues to be used for the proposed purposes.

6. *Monitoring*—A variety of safeguards have been built into the Program to monitor project performance and ensure adherence to Program guidelines and regulations. These monitoring elements are designed to prevent Program misuse and ineffective use of Program assets.

Monitoring by the member and its board of directors is required. The member must include in each AHP application an explanation of how the member intends to monitor and report the use of any subsidy or other assistance provided by the Bank including copies of any agreements entered into for this purpose. Each Bank must monitor, audit, and review its Program and member Program projects to ensure full compliance.

At a minimum, the Board and the Banks will audit the following Program elements: Bank contributions, subsidy

calculations, pricing, development, promotion, marketing, and compliance. In addition, member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, oversight, and innovative approaches to financing affordable housing will also be monitored. The Board has the responsibility and authority to monitor, audit, and review Bank and member compliance using all resources at its disposal.

Techniques for monitoring may include audits of applications and supporting documentation, loan-record analysis, specialized reporting and data gathering, and site inspections. The application process, periodic reporting, data gathering and site visits by Bank personnel will help provide necessary information.

Monitoring AHP advances and assistance for single-family homeownership will in all instances require compliance with a one-time initial income eligibility requirement to ensure that only the targeted households are the recipients of the subsidies.

In certain cases, such as community land trusts and limited-equity housing cooperatives, where long-term retention of income eligibility requirements and use restrictions are present, longer-term monitoring will be necessary, particularly at the time of sale or transfer of the housing unit.

Monitoring multifamily rental projects will require long-term tracking (both of use and income levels) to ensure that Program subsidy benefits remain available to very low-, low- and moderate-income households. Most local, state, and federally funded housing programs are targeted to very low-, low- and moderate-income households, and income eligibility is set and maintained for a designated period. Where Program subsidies are used in tandem with such programs, the income level recertification process required by the other program (usually annual) will normally satisfy the income eligibility monitoring requirements of the Program. Where other local, state, and federal officials perform field visits, loan and lease reviews, and other inspections, additional information will be available to assist the Board and the Banks in monitoring efforts.

7. Recapture—If at any time the proceeds of a subsidized advance will not be or cease to be used for authorized uses and eligible projects, the member who received such an advance must immediately notify the Bank that granted the advance. The member should immediately cease to provide subsidized funds to the project. Upon

receipt of such notice, the Bank shall recover the unused or improperly used portion of the subsidized advance, and, in doing so may exercise a number of options, including: repricing the advance to the interest rate applicable at the time the advance was made on non-subsidized advances of comparable type and maturity; requiring the member to reimburse the Bank for the amount of the subsidy remaining on the advance; assessing a prepayment penalty; or calling such advance. Under all circumstances, any subsidy committed but no longer used for an eligible project will become available for future projects.

To prevent potential windfall profits through the premature sale of rental housing that has been subsidized using AHP funds, members must either provide the Banks with evidence that the sales contract includes a provision that the housing will continue to be used for its original purpose, or agree to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

8. Maximum Subsidy—The Board believes it is important that recipients of Program subsidies contribute towards the provision of their housing. As such, the regulations set the maximum subsidized assistance to the amount needed to reduce the monthly housing payment for the targeted household to 28 percent of gross monthly income.

If the subsidized assistance is in the form of an advance, the regulation also specifies that the loan to the borrower shall be subsidized at least to the same extent as the advance is subsidized; the borrower must receive the full benefit of the subsidy.

9. Contributions to Program—The regulations set forth the funding requirements for the Program. As provided in FIRREA, the Banks are required to contribute a percentage of their preceding year's net income to the Program. Beginning in 1990, this amount shall be five percent of the preceding year's net income increasing to six percent in 1994, and to 10 percent in years thereafter.

The regulation also sets forth minimum annual total amounts that must be contributed by the Bank System as a whole as required in FIRREA. From 1990 through 1993, at least \$50 million must be contributed annually to the Program by the Banks. This amount will increase to \$75 million in 1994, and to \$100 million annually thereafter. To the extent that the percentage of income-based annual contributions of the Banks

do not meet these minimal, additional contributions shall be made *pro rata* by each Bank based on net income such that the minimum dollar requirement shall be met. Each Bank's *pro rata* share of such additional contribution will be determined by dividing the Bank's net income for the relevant period by the total System net income for the same period and then multiplying the percentage derived by the amount of the System shortfall.

The regulations clarify the method of calculation of net income for purposes of determining contributions. Section 721 of FIRREA defined net earnings as follows:

The net earnings of any Federal Home Loan Bank shall be determined for purposes of this paragraph—

- (A) After reduction for any payment required under section 21 or 21B of this Act; and
- (B) Before declaring any dividend under Section 16.

103 Stat. 424.

The Board believes it is appropriate to distinguish between those contributions made out of current income and those covered by historical retained earnings. The regulations, therefore, provide that, for purposes of calculating the annual amount of contributions, the Banks' annual net income is reduced by the \$300 million from current year earnings made under Section 21 and 21B of the FHLB Act.

10. Temporary Suspension of Contributions—Consistent with section 721 of FIRREA, the Board is providing a procedure for the temporary suspension of contributions in extraordinary circumstances. If a Bank believes that a temporary suspension is appropriate, the Bank must immediately notify the Board and make written application. The application should be accompanied by its preceding year's annual report and the most recent quarterly and monthly financial statements. Banks that apply for temporary suspension may also submit additional information not provided for in these regulations to support its case for suspension.

The regulations specify factors the Board will consider in determining whether to approve an application for temporary suspension, including, any decline in the Bank's quarterly or annual net income, paid-in membership capital, level of advances, and projections for these trends to continue. The Board will also consider other financial conditions that may contribute to the Bank's financial instability and financial data the Bank submits in support of its application.

The Board will disapprove a temporary suspension application if the Bank's financial instability results from a change in the term of advances, other than subsidized advances, inordinate operating and administrative expenses, non-standard banking practices, mismanagement, or is not justified by market conditions.

The Board will act on written applications for temporary suspension within 30 days of receipt, but the temporary suspension shall not take effect until the time period expires for a joint resolution of Congress disapproving the temporary suspension. The Board decisions shall be accompanied by specific findings and reasons for the action. All temporary suspensions will be granted for a specified time period. The Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate and each Bank shall receive written notice of any temporary suspension.

During a temporary suspension, the Bank shall provide the Board any financial reports the Board may require. The Board may determine at any time during the suspension that the Bank has returned to a position of financial stability and the Board may terminate the temporary suspension upon written notice to the Bank. A Bank may apply in writing for an extension of a temporary suspension, and the Board shall act on the request within 20 days of receipt. The Board will determine the effective date, issue written notice, and notify Congress and the Banks of extensions in a fashion similar to original temporary suspensions.

Congressional notice of suspensions will be sent to the Committees 60 days prior to the effective date of a suspension and 30 days prior to the effective date of an extension. The temporary suspensions granted by the Board will become effective on their prescribed dates, unless a joint resolution of Congress disapproving the temporary suspension is enacted prior to the effective date.

11. Unused Contributions—If a Bank fails to use the amount it is required to contribute to the Program in a given year, 90 percent of the unused amount will be paid over to the Affordable Housing Reserve Fund at the end of the year. The 10 percent of the unused or uncommitted amount retained by the Bank should be fully utilized or committed by that Bank during the following year and any remaining

portion must be deposited in the Program Reserve Fund.

12. Reserve Fund—The regulations provide for a reserve fund, to be used in the event that a Bank does not use all of its Program funds in a given year. Unused Program funds from one year will go into this reserve fund to be administered by the Board. Any Bank may apply to the Board to use the reserve funds, but only after its current annual allocation to the Program has been committed.

13. Coordination—The regulations require the Board and the Banks to coordinate Program activities to the maximum extent possible with other government agencies and with the appropriate non-profit organizations.

14. Advisory Councils—FIRREA requires the establishment of Program Advisory Councils by each Bank pursuant to regulations promulgated by the Board, as follows:

(11) **Advisory Council**—Each Bank shall appoint an Advisory Council of 7 to 15 persons drawn from community and non-profit organizations actively involved in providing or promoting low- and moderate-income housing in its District. The Advisory Council shall meet with representatives of the board of directors of the Bank quarterly to advise the Bank on low- and moderate-income housing programs and needs in the District and on the utilization of advances for these purposes. Each Advisory Council established under this paragraph shall submit to the Board at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

101 Stat. 425-426.

In recognition of the economic and geographic differences among the Bank Districts, the Board provides in these regulations that each Bank has the discretion to determine the size and member composition of its Advisory Council. Each Bank shall give consideration to the size and diversity of its District and the very-low, and low- and moderate-income housing needs of its District. The regulations provide that the composition of each Bank's Advisory Council must reflect the very low-, low- and moderate-income housing activities and needs within the District, as well as the full range of the community and non-profit organizations' concerns.

FIRREA provides flexibility in the selection of Council members in each District. At the same time, experience and commitment to providing and/or promoting very low-, low- and moderate-income housing should be the most important factors in choosing members. The Board recognizes that

state and local housing agencies represent a significant resource, based on their extensive experience in this area, that may be included in the Advisory Councils; however, in an effort to encourage broad representation, state and local agency officials should not constitute an undue proportion of the Council membership.

The nomination and selection process in the regulations is aimed at encouraging broad local participation in the process. Each Bank should actively solicit nominations from as many community and non-profit organizations as can be identified. In order to defray the expense of participating in the Advisory Councils, members will be compensated by the Banks for travel expenses and paid a subsistence allowance.

The regulations require that Council members serve staggered two-year terms. In so directing, the Board seeks to provide continuity in experience and service to the Advisory Council, as well as to provide frequent opportunities for new groups and individuals to serve on the Councils. Banks may use one-year terms initially, provided that all Banks must include in their Advisory Council plan a provision for staggered terms beginning no later than January 1991 that will ultimately lead to two-year terms with one-half of the terms expiring each year.

Each Council will designate one of its members or a member of the Bank's staff to act as Secretary of the Advisory Council. The Secretary will record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The Secretary's reports will be the initial basis for the annual Council reports to each Bank and the Board.

The regulations require that each Bank submit annually to the Board, for review and approval, a detailed plan for the operation of its Advisory Council.

During the review and approval process, the Board will discuss with the Banks any suggested additions and changes in order to ensure consistency among the Banks' Advisory Council structures, while leaving appropriate flexibility and discretion in each District.

C. Notice of 1990 AHP Funding and Open Application Period

For calendar year 1990, the Banks will have AHP funds available as follows:

Bank	District	1990 AHP (millions)
FHLB of Boston.....	CN, MN, MA, NH, RI, VT.....	\$5.982
FHLB of New York.....	NJ, NY, PR, VI.....	7.443
FHLB of Pittsburgh.....	DE, PA, WV.....	3.692
FHLB of Atlanta.....	AL, DC, NC, SC, FL, GA, MD, VA.....	8.643
FHLB of Cincinnati.....	KY, OH, TN.....	2.352
FHLB of Indianapolis.....	IN, MI.....	3.577
FHLB of Chicago.....	IL, WI.....	2.437
FHLB of Des Moines.....	IA, MN, MO, ND, SD.....	2.729
FHLB of Dallas.....	AR, LA, MS, NM, TX.....	12.782
FHLB of Topeka.....	CO, KS, NE, OK.....	4.908
FHLB of San Francisco.....	AZ, NV, CA.....	20.172
FHLB of Seattle.....	AK, GU, HI, ID, MT, OR, UT, WY, WA.....	4.066
Total.....		78.783

See the "DATES" section above for the open application periods and the final deadlines for 1990 applications.

Applications will only be accepted from members of the Federal Home Loan Bank System; the Federal Home Loan Banks do not make direct loans to borrowers.

D. Request for Public Comment

The Board requests public comments and suggestions on a wide range of affordable housing and community-oriented lending issues. Broad public participation will assist the Board in: (1) Preparing the final regulations for the Program; (2) designing other proposed regulations for community-oriented lending programs; and (3) developing programs to finance affordable housing in our nation's communities and neighborhoods. The list of issues and questions below is not exclusive; comments are requested on any issues and policy questions related to the operation and structure of the Program.

The Board specifically seeks comments on:

- Whether additional objectives should be included in the scoring system and whether the relative weights assigned to the various objectives are appropriate.
- The 28 percent of income criterion for calculating the maximum subsidy.
- Whether the regulation should also set a maximum basis point limitation or alternative limitations on the subsidies.
- How the Program and community-oriented lending initiatives can be best coordinated.
- Reports the Board should require of Banks and members to facilitate analysis and oversight.
- Monitoring issues.
- Offering the Program more than twice a year. Given the variance in the funds available by district, how the money should be allocated among offerings.

The Board also seeks comment on the general areas of:

- How can the Board and the Banks ensure that the Program reaches those that need it most?
- What are the best techniques to leverage Program subsidies?
- What local, state, and federal housing programs are best suited to be used in tandem with the Program?
- What new and innovative programs for affordable housing development and ownership should the Board consider?
- Are there projects or lending techniques that the Program should avoid or prohibit?
- How should the Board and the Banks preserve the long-term affordability of housing subsidized by the Program?
- What steps should be taken to foster neighborhood stability and manageable growth?

Administrative Procedure Act

The Board is adopting this regulation as an interim final rule effective on publication in the *Federal Register* without the usual notice-and-comment period or delayed effective date provided for in the Administrative Procedure Act, 5 U.S.C. 553. Those requirements may be waived for "good cause." 5 U.S.C. 553(b)(3)(B), 553(d)(3). A nationwide crisis in housing currently exists, to which Congress has responded by mandating this Program, to ensure decent, affordable housing and a suitable living environment to the large numbers of families and individuals. The Board finds that good cause exists because of the necessity of beginning the Program following its establishment by the enactment of FIRREA, wherein the Program definitions, funding, priorities, and restrictions are all expressly stated. In FIRREA, Congress specifically charged the Federal Home Loan Banks to "help the most critical community investment and affordable housing needs through utilization of special cash advance programs." H.R.

Conf. Rep. No. 222, 101st Cong., 1st Sess. 429 (1989). Providing notice and comment procedures and a delayed effective date would be impractical and contrary to the public interest because the Board could not immediately discharge its statutory responsibilities. The Board also notes that 1990 Program funds will not be exhausted prior to the receipt and analysis of public comment.

Regulatory Flexibility Act

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

List of Subjects in 12 CFR Part 960

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

Accordingly, the Board hereby amends chapter IX, title 12, Code of Federal Regulations, by adding a new subchapter E, consisting of part 960, as set forth below.

SUBCHAPTER E—AFFORDABLE HOUSING

PART 960—AFFORDABLE HOUSING PROGRAM

- Sec.
- 960.1 Definitions.
 - 960.2 Establishment of program.
 - 960.3 Use of subsidized advances and direct subsidies.
 - 960.4 Applications for funding.
 - 960.5 Project scoring and funding.
 - 960.6 Reporting requirements.
 - 960.7 Monitoring.
 - 960.8 Recapture.
 - 960.9 Maximum subsidy.
 - 960.10 Annual contributions.
 - 960.11 Temporary suspension of contributions.
 - 960.12 Unused contributions.
 - 960.13 Affordable Housing Reserve Fund.
 - 960.14 Coordination.
 - 960.15 Advisory Councils.

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as

added by sec. 511, 103 Stat. 394 (12 U.S.C. 441b).

§ 960.1 Definitions.

(a) *Advances* means extensions of credit to members under the Federal Home Loan Bank System Credit Program subject to this part 960 and 12 CFR part 935.

(b) *Affordable for very-low income households* means that monthly housing expense charged to tenants for units made available for occupancy by very-low income households shall not exceed 30 percent of the adjusted gross income of a very low-income household.

(c) *Area* means a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the Office of Management and Budget.

(d) *Community or non-profit organizations* means private, not-for-profit community-based organizations committed to serving community housing and development needs of very low-, low- and moderate-income households.

(e) *Cost of funds* means the estimated cost of raising Bank consolidated obligations as published from time to time by the Federal Home Loan Bank System's Office of Finance, with maturities comparable to those of the subsidized advances.

(f) *Low- and moderate-income households* means any household for which the aggregate income is eighty percent (80%) or less of the area median income.

(g) *Median income* means the median income for an area as determined and published by the United States Department of Housing and Urban Development.

(h) *Member* means an institution admitted to membership in a Federal Home Loan Bank ("Bank").

(i) *Net earnings of a Bank* means the net earnings of a Bank for a calendar year after deducting the Bank's *pro rata* share of the \$300 million annual contribution to REFCORP.

(j) *Program* means the Affordable Housing Program established by this part.

(k) *Subsidy* means the direct cash payment to the Program or the net present-value of the foregone cash flows to the Bank from making funds available under the Program at rates below the cost of funds.

(l) *Very low-income households* means households for which the aggregate income is fifty percent (50%) or less of the area median income.

§ 960.2 Establishment of program.

(a) It is the policy of the Board and the Banks to promote decent and safe

affordable housing and to address critical affordable housing needs through the use of subsidized advances, direct subsidies, and other assistance to members.

(b) Each Bank's board of directors should adopt an implementation plan consistent with FIRREA and these regulations to provide subsidized advances, direct subsidies, or other assistance to members engaged in long-term lending that provides owner-occupied and rental housing affordable to very low-, low- and moderate-income households. A copy of the plan shall be submitted to the Board prior to the end of the application period defined in § 960.4 of this part.

§ 960.3 Use of subsidized advances and direct subsidies.

(a) *General.* (1) Funds under each Bank's Program shall be used to provide subsidized assistance to members engaged in lending for activities eligible to receive subsidized assistance pursuant to the provisions of section 10(j) of the Act and this part. Subsidized advances made under the Program shall be consistent with the provisions of the Act and the regulations applicable to advances in general contained in 12 CFR part 935 except to the extent modified by this part. Direct subsidies and other assistance provided to members shall comply with the provisions of this part.

(2) In making extensions of credit under the Program, members shall use prudent, flexible, and innovative underwriting standards. Members shall maintain safe and sound lending practices consistent with the requirements of their primary regulator, designed to return a profit, but will be encouraged and assisted in funding qualified projects that do not meet customary or existing secondary mortgage market requirements or for which no secondary market exists. The Board and the Banks shall encourage and assist the development of new secondary markets for projects funded by the Program.

(b) *Authorized uses.* All members receiving subsidized advances, direct subsidies, and other assistance from a Bank shall use the proceeds of such subsidies and the benefits of such assistance to:

(1) Finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low- and moderate-income households; or

(2) Finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income

households for the remaining useful life of such housing or the mortgage term.

(c) Each Bank shall ensure that the preponderance of subsidies provided by the Bank is ultimately received by very low-, low- and moderate-income households in its District.

§ 960.4 Applications for funding.

(a) The Program is based on annual or semiannual District-wide competitions administered by the Board. In case of semiannual offerings, the initial Program funding during the first half of the calendar year, shall not exceed 60 percent of the Program funds for the year; the balance of the Program funds shall be offered and available during the second half of the calendar year. Each Bank shall notify its members of the amount of the annual Program funds available for the District, whether funding will be on an annual or semiannual basis, and begin accepting applications for Program funds by January 15 (and again by July 15 for semiannual offerings) of each year. The Board will also publish a list of each Bank's available funds under the program. The deadline for submitting applications to the Bank will be 45 days later. Those applications receiving the highest ratings will be forwarded by the Bank to the Board not later than 45 days after the close of the application period. The Board will announce the final funding decision within 30 days thereafter. For 1990, the application deadline is May 1, 1990. The amount of funding for each District will be based on the amount contributed by each Bank in accordance with Section 960.10 of this part.

(b) Each member shall include in its application for a subsidized advance, direct subsidy, or other assistance:

(1) A concise description of the purpose for the request, its relationship to the Program's priorities identified in § 960.5(b), and its consistency with the criteria identified in §§ 960.5(c), 960.5(d) and 960.5(e);

(2) A description of the feasibility of the project, including the local market conditions justifying the project;

(3) The qualifications of the sponsor;

(4) The calculation for the subsidy requested;

(5) An explanation of how the member intends to monitor and report the use of any subsidy or other assistance provided by the Bank including an explanation of how the structure of the project ensures that a preponderance of the assistance is ultimately received by the targeted groups;

(6) A certification that the subsidy received by the project will not exceed

maximum allowable under this program and an explanation of how any such subsidy will be recaptured; and,
 (7) A certification that the subsidy or other assistance shall only be for authorized uses.

§ 960.5 Project scoring and funding.

(a) *General.* (1) Each Bank will evaluate by the due date all applications received from its members that satisfy the use provisions identified in § 960.3(b). Projects should first be evaluated regarding their feasibility including the ability of the member to qualify for an advance to fund the project.

(2) Feasible projects that meet at least three of the priorities identified in paragraph (b) of this section shall be grouped and rated before projects that meet fewer than three of the priorities. Each Bank will then rank the projects within the first group (i.e., those meeting at least three priorities) based on the criteria contained in paragraphs (c), (d), and (e) of this section. Projects in the second group will be rated if there are insufficient applications in the first group.

(3) The total possible score a project may receive is 100 points. The maximum numerical score that a Bank may assign a project meeting the criterion identified in paragraph (c) of this section is 25 points, in paragraph (d) of this section is 15 points per criterion, and in paragraph (e) of this section is 10 points per criterion. In determining the number of points to award a project for any given criterion, the Bank should evaluate each proposed project relative to the other proposals received by the Bank, with the project best achieving the criterion receiving the highest point score for that criterion and the remaining projects scored on a declining scale.

(b) *Priorities.* Projects meeting at least three of the following objectives shall have priority for funding:

(1) Projects that finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low, low- and moderate-income households in that priority order; or

(2) Projects that finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States

including those held by the U.S. Department of Housing Urban Development, the Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, any state or political subdivision of any state, any local housing authority, or state housing agency;

(5) Projects that empower the poor through resident management, urban homesteading and similar programs;

(6) Projects that promote fair housing; or

(7) Projects that provide permanent housing for the homeless.

(c) *25 Point Category—Consistency with Priorities.* To ensure consistency with the priorities identified in paragraph (b) of this section, projects that achieve the greatest number of priorities or achieve more than one goal in a superior manner shall be awarded the most points in this category.

(d) *15 Point Category—(1) Targeting.* To encourage the flow of Program resources to households with incomes below the statutory maximums, the Bank will consider the extent to which the project targets households below the statutory maximums. The most points should go to projects serving the greatest number of very-low income households.

(2) *Long-term Retention.* To promote the continued availability of housing affordable for very low, low- and moderate-income households, the Bank will consider the extent to which the project facilitates the maximum retention of such housing as evidenced through the existence of long-term guarantees, covenants, and similar techniques. The Bank will evaluate the type of assurances and the number of units and years for which these assurances are given.

(3) *Effectiveness.* To ensure that the Program resources help the greatest number of households, the Bank will consider how effectively the project uses the Program subsidy dollars. Within this context, effectiveness should be measured by the number of units to be built or rehabilitated, or mortgages to be granted per Program subsidy dollar. A higher ratio reflects a more effective use of the subsidy dollars. To the extent a project is able to attract and efficiently use other sources of funds, (i.e., leverage the Program dollars) this will be reflected in the effectiveness ratio.

(e) *10 Point Category—(1) Community Involvement.* To be successful, most projects will need the support of the community in which the project is being proposed. Therefore, to encourage and facilitate the involvement of community interest groups in addressing the housing needs of the targeted groups, the Bank will consider the extent to which a project involves non-profit and community organizations, other than as sponsors, the breadth of community interests represented by the groups, and the extent to which the group is local in nature. More points should be given to projects that involve local groups representing a broad range of community interests.

(2) *Community Stability.* While the Program is designed to promote affordable housing, it should not do so at the expense of the households in the community being served. Therefore, the Bank shall evaluate the extent to which a project preserves community stability by minimizing the displacement of very low-, low- and moderate-income households and the extent to which the project serves existing very-low, and low- and moderate income members of the community.

(3) *Innovation.* To encourage innovation in providing affordable housing for very low-, low- and moderate income households, the Bank will consider the extent to which the project involves a particularly new or unusual approach for meeting the housing needs of these groups. In assessing a project under this criterion, the Bank will consider the degree to which the sponsor demonstrates that the project uses an innovative approach that holds promise of successfully meeting the housing needs of these groups. The Bank should consider both nonfinancial and financial innovation in providing affordable housing.

(f) (1) After the Bank has evaluated applications from members pursuant to this section, the Bank shall forward to the Board for final funding consideration applications from those projects receiving the highest overall rankings. To ensure an adequate pool of projects for Board consideration, each Bank shall forward to the Board the highest ranking projects sufficient to exhaust the funds available to the Bank under the Program plus the next four highest-ranking projects. If in the Board's opinion there is an insufficient number of applications from any Bank, the Board may request that the Bank submit to the Board for review additional eligible applications.

(2) The Bank shall also submit a summary of each project forwarded to the Board. The summary shall:

(i) Briefly describe the project;
 (ii) Indicate the amount of subsidy requested;

(iii) Describe how the member and Bank will monitor the project;

(iv) Describe the provisions for recapture of the subsidy, if necessary; and

(v) State the reason for the points awarded for each of the enumerated objectives.

(3) The Board will review the applications submitted from each Bank to ensure consistency with the Program's stated goals, priorities, and objectives. Based on this review and the rankings submitted by the Banks, the Board will make a final funding decision.

§ 960.6 Reporting requirements.

(a) Each Bank shall provide reports and documentation concerning the Program as the Board may from time to time request.

(b) To meet Board requests for reports and documentation, each Bank shall require members that receive a subsidy to file periodic reports with such Bank continuing until the subsidy has been fully used or repaid by the member. Reports shall, at a minimum, state the manner in which the member has used the proceeds of the subsidy and shall include a certification that the subsidy has been passed through by the member to the borrower. Reports shall be supported by appropriate underlying documentation.

(c) Each Bank will require the boards of directors of members receiving subsidies to report to the Bank on their use at least annually and to certify that the subsidy has been passed through to the borrower. Reports shall be supported by underlying documentation.

(d) Each Advisory Council established under this Part shall submit to the Board by January 31, 1991, and each subsequent year its analysis of the low-income housing activity of the Bank by which it is appointed.

§ 960.7 Monitoring.

(a) The Board shall have the responsibility and authority to monitor, audit, and review Bank and member compliance with the Program requirements of the Act, this Part, and other applicable laws and regulations. The Board shall, in its discretion, use all necessary resources, including Office of Inspector General and Office of General Counsel personnel, Program support staff, and specialized contractors.

(b) Each Bank shall monitor, audit, and review its Program and member Program projects and lending to guarantee full compliance.

(c) The Board and the Banks, at a minimum, shall audit the following Program elements:

(1) Bank contributions, subsidy calculations, pricing, development, promotion, marketing, and compliance.

(2) Member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, oversight, and innovative approaches to financing affordable housing.

(d) Monitoring of Program performance and compliance shall be by audits of applications and supporting documentation, loan-record analysis, specialized reporting, data gathering, site inspections, and such other techniques determined by the Board as necessary to detect and eliminate violations, fraud, mismanagement, and dissipation of Program assets.

(e) Miscalculations, errors, and violations of Program guidelines identified by the Board or a Bank shall be corrected immediately. In cases where subsidies have been improperly received, the Bank shall recover the subsidy amount, with penalties and interest if appropriate, in accordance with § 960.8 of this part. Other violations of the Act, this part, or other laws and regulations shall be referred to the Board, the Bank, and other agencies of competent jurisdiction for criminal prosecution or civil recovery.

§ 960.8 Recapture.

(a) A member shall notify the Bank immediately upon receiving information that the proceeds of a subsidized advance or other subsidized assistance granted by the Bank to the member will not be or are no longer being used for the purposes approved by the Bank and the Board. The member shall not advance any further subsidized funds. Furthermore, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future projects.

(b) In recapturing unused or improperly used subsidies, the Bank shall, at its discretion, take any or all of the following actions:

(1) Reprice the advance at the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance;

(2) Call the advance;

(3) Assess a prepayment penalty;

(4) Require the member to reimburse the Bank for the amount of the subsidy remaining on the advance or other assistance.

(c) To preclude potential windfall profits on the premature sale of rental

housing where a Program subsidy has already been fully used to develop or rehabilitate the property, the member shall agree, in the event of such a sale, to:

(1) Provide the Bank with evidence that the sales contract includes a provision that the rental housing will continue to be used for the purpose originally intended; or

(2) Agree to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

§ 960.9 Maximum subsidy.

(a) A Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing cost for the targeted household to 28 percent of the household's gross monthly income.

(b) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank.

§ 960.10 Annual contributions.

(a) Each Bank shall fund its Program in accordance with the following formula:

(1) On January 1 of 1990, 1991, 1992, and 1993, the greater of:

(i) 5 percent of the Bank's net income for the previous year (as defined in § 960.1(i) of this part); or

(ii) That Bank's *pro rata* share of an aggregate of \$50 million to be contributed in total by the Banks. Such proration shall be made on the basis of the net income of the Banks for the previous year.

(2) On January 1 of 1994, the greater of:

(i) 6 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of \$75 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(3) On July 1 of 1995 and each year thereafter, the greater of:

(i) 10 percent of the Bank's net income for the previous year; or

(ii) 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 income of the Banks for the previous year.

(b) Funding sources for subsidized advances and subsidies under the program shall be at the discretion of each Bank.

§ 960.11 Temporary suspension of contributions.

(a) If making the contributions required by § 960.10 of this part will lead to the financial instability of a Bank, the Bank shall notify the Board as soon as it learns of the problem. The Bank may apply for a temporary suspension of Program contributions. The application for the temporary suspension shall be in writing and shall be accompanied by the Bank's preceding year's annual report, if available, and the Bank's most recent quarterly and monthly financial statements. In addition, the application shall state the period of time for which the Bank seeks a suspension and shall include a plan for returning the Bank to a financially stable position.

(b) In reviewing a Bank application for temporary suspension of contributions, the Board shall consider the following factors and financial data:

(1) The extent to which the Bank's quarterly or annual net income has decreased from the preceding quarter or year and whether such decline is projected to continue;

(2) The extent to which the Bank's in membership capital has declined in any given quarter or year and whether such decline is projected to continue;

(3) The extent to which the Bank's level of advances has declined in any given quarter or year and whether such decline is projected to continue;

(4) Other financial conditions, which, in the opinion of the Bank's board of directors, have resulted, or are likely to result in the financial instability of the Bank; and

(5) The financial data submitted by the Bank in support of its application.

(c) The Board shall disapprove an application for a temporary suspension if it determines that a Bank's financial instability is a result of:

(1) A change in the terms of advances (other than subsidized advances) not justified by market conditions;

(2) Inordinate operating and administrative expenses;

(3) Operation of the Bank in a manner contrary to accepted banking practices for the Banks;

(4) Mismanagement; or

(5) If for any other reason the temporary suspension is not warranted.

(d) Within thirty (30) days after receipt of a written application made pursuant to paragraph (a) of this section, the Board shall approve or disapprove such application in writing. The Board's

decision shall be accompanied by specific findings and reasons for its action and shall state the time period for any temporary suspension. A copy of the decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(e) During the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of such Bank. If, in the opinion of the Board, a Bank has returned to a position of financial stability prior to the conclusion of the temporary suspension period, the Board may, upon written notice to the Bank, terminate such temporary suspension.

(f) A Bank may apply for an extension of a temporary suspension when such Bank's board of directors determines that the Bank has not, or is not likely to, return to a position of financial stability at the conclusion of the temporary suspension. A request for an extension is to be in written form and shall be approved or disapproved by the Board within twenty (20) days of receipt. The Board's decision to approve or disapprove a request for an extension shall be accompanied by specific findings and reasons for its actions and shall state the effective date and time period of any extension. A copy of such decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(g) The Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate of any temporary suspension and any extension of a temporary suspension. A temporary suspension may not take effect until at least sixty (60) days after the Board gives the notice of its action required by this section. An extension of a temporary suspension may not take effect until at least thirty (30) days after the Board gives the notice of its action required by this section. Such suspension or extension shall become effective as determined by the Board unless a joint resolution of Congress is enacted, prior to the Board's determined effective date, disapproving such suspension.

§ 960.12 Unused contributions.

If a Bank fails to use or commit the amount it is required to contribute to the Program pursuant to § 960.11 of this part in a given year, ninety percent (90%) of the amount that has not been used or committed in that year shall be paid

over to the Affordable Housing Reserve Fund established and controlled by the Board. The ten (10) percent of the unused and uncommitted amount retained by a Bank should be fully utilized or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund.

§ 960.13 Affordable Housing Reserve Fund.

(a) No later than January 15 of each year, each Bank shall provide to the Board, a statement indicating the amount of funds from the prior year, if any, which will be paid over to the Affordable Housing Reserve Fund.

(b) No later than January 31 each year, the Board will notify the Banks of the total amount available in the Affordable Housing Reserve Fund.

(c) Upon receipt of an application from a member, a Bank may apply to the Board for use of the available Reserve Funds. Such application shall only be made after the Bank has used or committed all of its current annual allocation to the Program. Such application shall state the amount of funds desired, the purpose of the advance to be made with such funds, and the subsidy to be made on the advance or other subsidized assistance. The application shall be accompanied by the written application of the member requesting a subsidy and shall be acted upon by the Board.

§ 960.14 Coordination.

The Board and the Banks shall coordinate activities under this part, to the maximum extent possible, with other Federal, State, or local agencies and non-profit organizations involved in affordable housing activities.

§ 960.15 Advisory Councils.

(a) Each Bank shall appoint an Advisory Council of 7 to 15 persons drawn from community and non-profit organizations actively involved in providing or promoting low- and moderate-income housing in its District. The Advisory Council shall meet with representatives of the board of directors of the Bank quarterly to advise the Bank on very low-, low- and moderate-income housing programs and needs in the District and on the use of subsidized advances, direct subsidies, and other assistance for these purposes. Each Advisory Council established under this § 960.15 shall submit to its Bank and the Board at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

(b) Advisory Councils shall be appointed by the Banks giving consideration to the size and diversity of the District, and the very low-, low- and moderate-housing needs of the District.

(c) The composition of the Advisory Council shall reflect the very low-, low- and moderate-income housing activities and needs within the District, as well as the full range of community and non-profit organizations' concerns. Local and state housing officials may serve as members of an Advisory Council, provided that such officials do not constitute an undue proportion of the membership.

(d) The nomination and selection process shall be as broad and as participatory as possible. Each Bank shall actively solicit nominations from community and non-profit organizations, allowing sufficient lead time for responses.

(e) Council members shall be paid travel expenses by the Banks, including transportation and subsistence, for each day devoted to attending meetings.

(f) Council members shall serve terms of 2 years, but the terms shall be staggered to provide continuity in experience and service to the Advisory Council. Banks may use one-year appointments in establishing new Councils, provided that all Banks include in the Advisory Council plans submitted pursuant to paragraph (i) of this section provisions for staggered terms beginning no later than January 1991 with one-half of the terms expiring each year.

(g) Each Council shall designate a member or request that a member of the Bank's staff be designated to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as Secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

(h) Meetings of the Advisory Council shall be held at least once each quarter and may be held more frequently at the call of the Bank.

(i) By January 31, of each year each Bank shall submit to the Board for review a detailed plan for the operation of its Advisory Council during the year. Such plan shall be subject to review by the Board. Plans shall contain such information as the Board may from time to time require and shall be updated by each Bank as necessary.

Dated: February 26, 1990.

By the Federal Housing Finance Board.
Jack Kemp,
Chairman.
[FR Doc. 90-4726 Filed 3-1-90; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 16

Hydroelectric Relicensing Regulations Under the Federal Power Act

[Docket No. RM87-33-002; Order No. 513-B]

Issued: February 26, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing.

SUMMARY: In response to Order No. 513-A, the Federal Energy Regulatory Commission (Commission) received a request for clarification from the Wisconsin Department of Natural Resources and a request for rehearing from the Edison Electric Institute.

In its request for clarification, Wisconsin suggests a possible inconsistency between the discussion of Indian tribes in the preamble and the Commission's regulations. After carefully reviewing the definition discussed in the preamble, the Commission finds that the definition in § 16.2(f)(4) uses the same language, and to the extent that there might be any inconsistency, the regulation is controlling.

The Edison Electric Institute request alleges that § 16.18(d) of the Commission's regulations is in conflict with relevant provisions of the Federal Power Act. Section 16.18(d) of the Commission's regulations simply states that the Commission "may" attach conditions to annual licenses if circumstances so warrant. Since the Commission will exercise these powers in a manner fully consistent with its legal authority, Edison's request for rehearing is denied.

EFFECTIVE DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ethel Lenardson Morgan, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-3530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or

copy the contents of this document during normal business hours in Hearing Room A at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order denying rehearing will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dora Systems Corporation, also located in Hearing Room A, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Order Denying Rehearing

The Commission received a request for clarification and a request for rehearing of Order No. 513-A.¹

In a request for clarification, the Wisconsin Department of Natural Resources suggests a possible inconsistency between the background discussion on Indian tribes in the preamble and the definition at § 16.2(f)(4).² The section of the preamble quoted by Wisconsin, however, is taken from the preamble's description of the comments submitted by the U.S. Department of Commerce. For purposes of explaining the regulation adopted, the more relevant discussion in the preamble is the Commission's own views on this matter:

A definition of "Indian tribe" has been added to make clear what entities are entitled to participate in the pre-filing consultation process. The definition includes all Indian groups that are united under one governing body, inhabit a particular and distinct territory, and are appropriately recognized as Indian tribes by the United States. A nexus test is also included in the definition, so that consulted Indian tribes must have tribal (as distinct from individual or social) rights that are or have been affected by the project. In other words, where a project adversely affects the harvest of anadromous fish or is located within a

¹ Order on Rehearing, 55 FR at 4 (Jan. 2, 1990), III FERC Stats. & Regs. ¶30,869 (Dec. 26, 1989).

² 18 CFR 16.2(f)(4) (1989).