terms and conditions as the Finance Board may prescribe.

(h) *Finance Board actions under this section.* Except as provided in paragraph (c)(2)(ii) of this section, actions taken by the Finance Board pursuant to this section shall be subject to the Finance Board's procedures for review of disputed supervisory determinations set forth in §907.9 of this chapter.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998; 65 FR 8264, Feb. 18, 2000; 67 FR 12852, Mar. 20, 2002; 67 FR 18805, Apr. 17, 2002]

§951.13 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving a subsidized advance or direct subsidy an agreement or agreements containing the provisions set forth in this section.

(b) *General provisions*—(1) *Subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project, or household in the case of homeownership set-aside funds, for which the subsidy was approved.

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

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

(3) *Repayment of subsidies in case of noncompliance*—(i) *Noncompliance by the member.* The member shall repay subsidies to the Bank in accordance with the requirements of §951.12(a)(1).

(ii) *Noncompliance by a project sponsor or owner*—(A) *Agreement.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to repay AHP subsidies in accordance with the requirements of §951.12(b).

(B) *Recovery of subsidies.* The member shall recover from the project sponsor or owner and repay to the Bank any subsidy in accordance with the requirements of §951.12(a)(2).

(4) *Project monitoring*—(i) *Monitoring by the member.* The member shall comply with the monitoring requirements of §§951.10(b) and 951.11(a)(3)(ii).

(ii) *Monitoring by the project sponsor.* The member shall have in place an agreement with the sponsor of an owner-occupied project in which the sponsor agrees to comply with the monitoring requirements of §951.10(a)(1).

(iii) *Monitoring by the project owner.* The member shall have in place an agreement with the owner of a rental project in which the owner agrees to comply with the monitoring requirements of §§951.10(a)(2) and 951.11(a)(3)(i).

(5) *Transfer of AHP obligations to another member.* The member will 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.

(c) *Special provisions where members obtain subsidized advances*—(1) *Repayment schedule.* The term of the 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.

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

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

(i) 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 reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(ii) 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.

(4) *Retention agreements for owner-occupied units*—(i) *Units with AHP-assisted permanent financing.* The member shall ensure that an owner-occupied unit with permanent financing obtained from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(B) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(i); and

(C) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(ii) *Units constructed or rehabilitated with AHP-assisted financing.* The member shall ensure that an owner-occupied unit constructed or rehabilitated with a loan from the proceeds of a subsidized advance but which does not have permanent financing from the proceeds of a subsidized advance, is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(B) In the case of a sale prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household;

(C) In the case of a refinancing prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the owner occupied the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(ii); and

(D) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(5) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by a loan from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) 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 AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to the sale or refinancing, shall

be repaid to the Bank, unless 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 AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

(6) *Transfer of AHP obligations 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 upon prepayment or orderly liquidation by the nonmember of the subsidized advance.

(d) *Special provisions where members obtain direct subsidies*—(1) *Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit that is purchased, constructed, or rehabilitated with the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale of the unit prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the following parties, as applicable, from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low-or moderate-income household:

(A) To the Bank: If the Bank has not authorized re-use of the repaid subsidy pursuant to §951.12(e)(2); if the Bank has authorized re-use of the repaid subsidy but not retention of such subsidy by the member or project sponsor pursuant to §951.12(e)(2); or if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to §951.12(e)(2) and the repaid subsidy is not re-used in accordance with the requirements of the Bank and §951.12(e)(2); or

(B) 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 §951.12(e)(2);

(iii) In the case of a refinancing prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the occupying household has owned the unit, shall be repaid to the following parties, as applicable, from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (d)(1):

(A) To the Bank: If the Bank has not authorized re-use of the repaid subsidy pursuant to §951.12(e)(2); if the Bank has authorized re-use of the repaid subsidy but not retention of such subsidy by the member or project sponsor pursuant to §951.12(e)(2); or if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to §951.12(e)(2) and the repaid subsidy is not re-used in accordance with the requirements of the Bank and §951.12(e)(2); or

(B) 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 §951.12(e)(2); and

(iv) The obligation to repay AHP subsidy to the Bank, or to the member or project sponsor, as applicable, shall terminate after any foreclosure.

(2) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) 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 AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, an amount equal to the full amount of the direct subsidy shall be repaid to the Bank, unless 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 AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

(3) *Lending of direct subsidies.* If a member or a project sponsor lends a 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.

(4) *Transfer of AHP obligations 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.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0006 with an expiration date of June 30, 2004)

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§ 951.14 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension*—(1) *Notification to Finance Board.* If a Bank finds that the contributions required pursuant to § 951.2 are contributing to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

(2) *Contents.* A Bank's application for a temporary suspension of contributions shall include:

(i) The period of time for which the Bank seeks a suspension;

(ii) The grounds for a suspension;

(iii) A plan for returning the Bank to a financially stable position; and

(iv) The Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

(b) *Board of Directors review of application for temporary suspension*—(1) *Determination of financial instability.* In determining the financial instability of a Bank, the Board of Directors shall consider such factors as:

(i) Whether the Bank's earnings are severely depressed;

(ii) Whether there has been a substantial decline in the Bank's membership capital; and

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding.

(2) *Limitations on grounds for suspension.* The Board of Directors shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

(c) *Board of Directors decision.* The Board of Directors' decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Board of Directors approves a Bank's application for a temporary suspension, the Board of Directors' written decision shall specify the period of time such suspension shall remain in effect.

(d) *Monitoring.* During the term of a temporary suspension approved by the Board of Directors, the affected Bank