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as long as the rent charged remains affordable, as defined in § 951.1, for the household occupying the unit.

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[62 FR 41828, Aug. 4, 1997, as amended at 65 FR 5419, Feb. 4, 2000; 65 FR 8264, Feb. 18, 2000]

§ 951.12 Remedial actions for non-compliance.

(a) *Repayment of subsidies by members*—(1) *Noncompliance by member.* A member shall repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(i) The member cures the noncompliance within a reasonable period of time; or

(ii) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(2) *Noncompliance by project sponsors or owners*—(i) *Duty to recover subsidies.* A member shall recover from the sponsor of an owner-occupied project or the owner of a rental project and repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(A) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(B) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(ii) *Limitation on duty to recover subsidies.* The member shall not be liable to the Bank for the return of amounts that cannot be recovered from the project sponsor or owner through reasonable collection efforts by the member.

(b) *Repayment of subsidies by project sponsors or owners.* A sponsor of an

owner-occupied project and the owner of a rental project shall repay to the member the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(1) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to § 951.7.

(c) *Requirements for Banks*—(1) *Duty to recover subsidies.* A Bank shall recover from a member:

(i) The amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; and

(ii) The amount of any subsidies recovered by a member from the sponsor of an owner-occupied project or the owner of a rental project pursuant to the requirements of paragraph (a)(2) of this section.

(2) *Settlements.* A Bank may enter into an agreement or other arrangement with a member for the purpose of settling claims against the member for repayment of subsidies. If a Bank enters into a settlement that results in the return of a sum that is less than the full amount of any AHP subsidy that is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, the Bank may be required by the Finance Board to reimburse its AHP fund in the amount of any shortfall under paragraph (c)(3) of this section, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or

(ii) The Bank obtains a determination from the Board of Directors that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts).

(3) *Reimbursement of AHP fund.* The Finance Board may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) As a result of the Bank's actions or omissions, AHP subsidy is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; or

(ii) The Bank has failed to recover AHP subsidy from a member pursuant to the requirements of paragraph (c)(1) of this section, and has not shown such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(d) *Parties to enforcement proceedings.* A Bank, in its AHP implementation plan, may provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding.

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

(2) *Re-use of repaid AHP direct subsidies in same project.* AHP direct subsidy, including any interest, repaid to a member or project sponsor under a homeownership set-aside program or the competitive application program, respectively, may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such par-

ties, or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, in its AHP implementation plan, provided all of the following requirements are satisfied:

(i) The member or the project sponsor originally provided the direct subsidy as downpayment, closing cost, rehabilitation or interest rate buydown assistance to an eligible household to purchase or rehabilitate an owner-occupied unit pursuant to an approved AHP application;

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

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

(f) *Suspension and debarment—(1) At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

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

(g) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such

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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