

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.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998; 65 FR 5419, Feb. 4, 2000; 65 FR 8264, Feb. 18, 2000; 67 FR 18805, Apr. 17, 2002; 70 FR 9511, Feb. 28, 2005]

§ 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

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(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 shall provide to the Board of Directors such financial reports as the Board of Directors shall require to monitor the financial condition of the Bank.

(e) *Termination of suspension*. If, prior to the conclusion of the temporary suspension period, the Board of Directors determines that the Bank has returned to a position of financial stability, the Board of Directors may, upon written notice to the Bank, terminate the temporary suspension.

(f) *Application for extension of temporary suspension period*. If a Bank's

board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

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

§ 951.15 Affordable Housing Reserve Fund.

(a) *Reserve Fund*—(1) *Deposits*. If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 951.2, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund.

(2) *Use or commitment of funds*. Approval of applications for AHP subsidies sufficient to exhaust the amount a Bank is required to contribute pursuant to § 951.2 shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

- (i) The next highest scoring AHP application in the Bank's final funding period of the year for its competitive application program; or
- (ii) Pending applications for funds under the Bank's homeownership set-aside programs;
- (iii) Project modifications approved by the Bank pursuant to the requirements of this part.

(3) *Carryover of insufficient amounts*. Such insufficient amounts as described in paragraph (a)(2) of this section shall be carried over for use or commitment in the following year in the Bank's competitive application program or homeownership set-aside programs.