



FEDERAL HOME LOAN BANK OF INDIANAPOLIS

*Building Partnerships. Serving Communities.*

April 25, 2006

VIA FEDERAL EXPRESS

Federal Housing Finance Board  
1625 Eye Street, NW  
Washington, DC 20006  
Attention: Public Comments

Re: Proposed Revisions to 12 CFR Part 951 affecting the Affordable Housing Program

Please find attached comments submitted by the Federal Home Loan Bank of Indianapolis (FHLBI) staff, its Board of Directors and Affordable Housing Advisory Council.

The FHLBI appreciates that the Finance Board has considered the need to update and revise the current regulation to make it more flexible and to improve the operational efficiencies of the program. Our comments are intended to support that process and reflect our actual experience with the program, particularly since the last comprehensive amendment effective in January 1998.

Sincerely,

A handwritten signature in black ink that reads "Teresa S. Lubbers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Teresa S. Lubbers  
Chair, Affordable Housing Committee  
FHLBI Board of Directors

Citation	Proposed Rule Amendments
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951.1	<p><b>Definitions</b></p> <p>Clarified and added several terms: “affordable,” “AHP project,” “household,” “net earnings of a Bank,” “owner-occupied project,” “retention period,” and “sponsor.”</p>
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**FHLBI comments**  
**Recommend that the FHFB allow each Bank to define ‘closing’ in its Implementation Plan (IP) for purposes of retention agreements for owner-occupied rehabilitation programs.**

951.2	<p><b>Required Annual AHP Contributions</b></p> <p>1. Clarifies that a Bank’s annual contribution could not exceed its net earnings from the previous year.</p>
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**FHLBI comments**  
**In the event an FHLBank assumes more than its pro rata share in any given year (due to another FHLBank’s inability to meet its pro rata share), the FHLBI requests clarification from the FHFB as to whether an FHLBank will have a carry-forward credit against its future required AHP contribution. As stated, the proposed rule does not to permit the FHLBanks to “recover” the excess contribution from the under contributing FHLBank in the future.**

	<p>2. In addition, the acceleration of funds into the current year from the subsequent year would be eliminated.</p>
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**FHLBI Comments**  
**The preamble notes that acceleration of funds presents operational difficulties because projections of the next year’s income may be inaccurate. The FHLBI has utilized this provision and did not find it to be administratively difficult. Eliminating this provision will remove a flexibility that should be championed: *the ability to respond and disseminate needed funds in the face of natural disasters within the district.* The FHLBI is a rare source of private funding that can be utilized in such cases. The FHLBI has used this provision to develop the Disaster Recovery Plan (DRP) to enable us to respond to member needs in federally-declared disaster areas. Without the ability to ‘borrow’ from the next year, the DRP will have to be eliminated. An option would be for the FHFB could place a predetermined limit on the amount that can be borrowed from a subsequent year. FHLBI would suggest a \$1 million limit. This would allow the FHLBank flexibility to immediately respond to emergency situations and get funding “on the ground” expeditiously.**

	<p><b>AHP Implementation Plan</b></p>
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951.3	<p>Would require that monitoring requirements be set forth in the Bank’s Implementation Plan.</p>
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**FHLBI Comments**  
**While monitoring requirements should be included in the IP so that participants understand programmatic guidelines, the FHLBI would suggest that the requirements written in the Implementation Plan should be broad-based and not “procedural in nature’ to avoid the necessity to seek Board approval of the IP every time operational procedures are changed. Concern exists that the IP would become too “technical” in nature as to lose its usefulness. Recommend that the monitoring requirements in the Implementation Plan be general, and allow for reference to other written procedural guidelines.**

951.4	<b>Advisory Councils</b>
	Prohibits a Bank's board of directors from delegating to Bank officers or other Bank employees its responsibility for appointing Advisory Council members or for meeting with the Advisory Council.
<p><b>FHLBI comments</b></p> <p>Given the added duties and responsibilities of each FHLBank's board of directors, we believe each local board should determine the frequency with which the board or its housing committee meets with the Advisory Council. Therefore, the FHLBI does not support the 951.4(f) proposal to take away from each local board its existing governance authority to delegate to bank staff to meet on occasion with the Advisory Council. Since the statute mandates four meetings per year, this delegation should remain so as to allow each local board to control and prioritize its meeting agenda.</p>	
951.5	<b>Competitive Application Program</b>
	<ol style="list-style-type: none"> <li>1. Need for subsidy. Would maintain existing eligibility requirements which require that an AHP application exhibit the "need for subsidy" based on its estimated total sources and uses of funds, but would supersede RI-199-03 which required the Banks to calculate in-kind and volunteer professional services using a complex present value analysis.</li> <li>2. Project costs. Clarifies that the determination of projects costs is a separate eligibility requirement and would remove a requirement that project costs be "customary" and determined according to "industry standards." Would require Banks to determine whether a project's costs are reasonable by considering many other factors including, development conditions and project location, etc.</li> <li>3. Distinguishes a project's "developmental" feasibility (i.e., the likelihood it will be completed and occupied) and "operational" feasibility (the ability to operate in a sound manner).</li> </ol>
<p><b>FHLBI comments</b></p> <p>The FHLBI generally supports the second and third, proposals as they allow the FHLBanks more flexibility in addressing project needs based on a variety of factors which can influence development costs and operational budgets. The FHLBI would suggest, however, that the "need for subsidy" analysis is not necessary, and would recommend that such requirement be eliminated. Subjective decisions regarding need and cost provide little added benefit when underwriting a project. Income targeting and the overall purpose of the project is enough without layering on a supplementary need and cost analysis which adds little additional benefit. In its place, the FHLBI strongly supports the proposal's recommendation to conduct both a "development feasibility" and "operational feasibility" analysis.</p>	
	<ol style="list-style-type: none"> <li>4. Revolving loan funds and loan pools. Section 951.5(c) will explicitly allow for revolving loan funds and loan pools.</li> </ol>
<p><b>FHLBI comments</b></p> <p>The FHLBI supports the ability of individual FHLBanks to offer revolving loan funds and loan pools. However, it would appear that monitoring and scoring of such programs would be extremely difficult under the current framework of the regulation and may be better served under a set-aside-type structure.</p>	
	<ol style="list-style-type: none"> <li>5. Scoring. Banks would no longer be authorized to provide scoring preferences to out-of-district projects. Makes minor scoring changes for housing outside of disaster areas.</li> </ol>

<b>FHLBI comments</b>	
The proposed rule suggests minor changes to the current scoring system with the exception of disaster areas and out-of-district projects. This is an area, however, that the FHLBI would strongly encourage be given additional attention in this regulatory rewrite. Please see FHLBI's detailed comments regarding scoring changes below.	
	6. Modifications of applications prior to or after project completion. Clarifies modifications must be for good cause and documented in writing by the Bank.
<b>FHLBI comments</b>	
The FHLBI would further recommend that the FHLBanks be given additional authority to approve modifications even in the event that the project as <i>rescored</i> "would <i>not</i> continue to score high enough to have been approved in the funding period in which it was originally scored." FHLBanks should have the flexibility to evaluate these issues on a comprehensive, project-level basis which includes, but is not limited to, evaluating the length of time the project has complied, the risk of loss of units and/or financial distress to the project if the modification is not approved, and consideration and cooperation with other funding sources.	
<b>951.6</b>	<b>Homeownership set-aside program</b>
	1. Timing of household income-eligibility determination. Clarifies when eligibility is determined and preamble states FHFB's expectation that Bank policies will "preclude use of the program by individuals whose low- or moderate-income eligibility is a temporary condition."
<b>FHLBI comments</b>	
The FHLBI supports having income determined at the time the person is enrolled as proposed, however, the preamble's expectation that the FHLBI can somehow preclude otherwise income eligible individuals deemed "temporary" is not easily workable, is too subjective, possibly highly inaccurate and should be eliminated from the final rule. For example, this policy would seem to adversely impact a graduating student who has accepted a career in public service whose income may increase, but may still be income-qualified. Lastly, many small communities struggle to attract college graduates because of a lack of affordable housing opportunities as well as a less competitive pay scale, such as working as a writer for a local newspaper, a new teacher in an inner city or rural community, or for positions in local government. The goal of this program should be not only to help promote community stability by increasing the level of homeownership, but also to encourage asset-building through homeownership.	
	2. Homeownership counseling. Proposed rules removes requirement that homeowners obtain homeownership counseling and makes it an option to be determined by the Banks.
<b>FHLBI comments</b>	
The FHLBI supports the removal of counseling as a mandatory requirement as it recognizes the practical challenges and varying needs of individual homeowners, especially as it relates to rehabilitation grants. The FHLBI will continue to endorse and support homeownership counseling where appropriate.	
	3. Member financial incentives. FHFB requests comments on whether member financial incentives should be mandatory or whether additional incentives should be required.
<b>FHLBI comments</b>	
The FHLBI strongly opposes any requirement of financial incentives or other additional requirements and supports the ability of the FHLBanks to determine their own program requirements or incentives. Member	

banks offer such incentives for a variety of reasons, i.e., market demand, underwriting issues, product offerings, etc., not necessarily because there is a grant involved. This is evident from the varying degrees of member incentives provided. It is imperative that the flexibility of this program be maintained by allowing the FHLBanks to set their own guidelines. The FHLBI has found that smaller institutions utilize this program because of its ease of use and administration which we want to maintain.

4. Financing costs. Requires rate of interest, points, fees, and other charges imposed by the member to not exceed a reasonable market rate.

**FHLBI comments**

**FHLBI does not support this provision as it would require member institutions to regulate other lenders when the member is not making the mortgage.**

5. Cash back at closing. Cash back would be expressly prohibited under the proposed rule and would require any subsidy to reduce the principal of the mortgage loan.

**FHLBI comments**

**FHLBI recommends that the FHFB allow a *de minimis* exception of \$500. This would allow for differences in calculating closing costs, as many times the closing is managed by the title company and is out of the member's control. Such absolute restrictive language risks making this program too burdensome for members to manage, especially smaller institutions with limited staffing capabilities. In addition, this prohibition against cash back at the initial purchase would seem to conflict with the proposed changes in §951.9(a)(7)(ii)(A) which intends to "remove a possible deterrent to refinancing by households that seek to make their units more affordable or *obtain equity for purposes of economic betterment.*" In one instance it is strictly prohibited to allow cash back at closing; however the entire loan could be refinanced within days of closing with the entire grant being given back to the customer in cash or unfortunately, used as equity to obtain a high interest second mortgage. Lastly, most individuals, at the time of purchasing a new home will use any cash received at closing to assist in the costs of moving and for the purchase of the various and sundry items from cleaning supplies to paint needed for the home.**

951.7

**Monitoring**

Proposed changes in this section would require each Bank to create its own risk-based monitoring requirements for both the competitive and the set-aside programs as opposed to the existing prescriptive requirements.

**FHLBI comments**

**FHLBI supports allowing greater flexibility and a focus on a risk-based monitoring plan. The FHLBI would strongly recommend the FHFB provide clear guidance via an examination manual that would outline the standards of accountability for the FHLBanks so that there is consistency in the examination process. Under section 951.7(a)(1)(ii), the FHLBanks are required to review 'back-up documentation' regarding household incomes and rents. The FHLBI recommends that the term "back-up documentation" be changed to "income documentation" and acceptable documentation be specifically delineated. Also, the FHFB should provide detailed guidance on acceptable sampling plans. The FHLBI also recommends that the rule be clarified to allow all monitoring of income targeting, rents and retention periods to be done solely by state housing finance agencies. Additionally, the FHLBI recommends that the proposed regulation clarify the definition of "reliance," so that it is clear that FHLBanks would not be required to monitor beyond review of reports from the housing finance agency.**

951.8	<b>Remedial Actions for Noncompliance</b>
	1. Additional clarification needed on when recovery is not required.
<p><b>FHLBI comments</b></p> <p>The FHLBI requests that Section 8(c)(3) include express language that repayment would be excused if the cost to recover the subsidy would exceed the amount to be recovered or that it is likely to be recovered. Further, this exception will apply even if a member or sponsor were negligent, if the member or sponsor can show that recovery would not be possible even if there had been no negligence.</p>	
	2. Requires Bank to reimburse AHP fund in the amount of any AHP subsidies misused as a result of the Bank's actions or omission.
<p><b>FHLBI comments</b></p> <p>If an FHLBank fails to comply with the AHP regulations, its board of directors should be required to make an affirmative determination whether or not it must reimburse its AHP fund. If the Finance Board disagrees with a local board's finding, then the full Finance Board should order the reimbursement after notice and a hearing.</p>	
	3. Removes existing provision allowing a Bank to enter into a written agreement with a member, project sponsor, or project owner under which it consents to be a party to a FHFB enforcement action.
<p><b>FHLBI comments</b></p> <p>The FHLBI does not believe this provision which places the member, project sponsor or project owner under the jurisdiction of the Finance Board should be removed. Unless this provision is required in the regulation, third parties will not willingly consent to enter into such an agreement. In the event of litigation regarding the administration of the AHP, the rules should make it clear that disputes are first to be adjudicated by the Finance Board rather than by a state or federal court. Moreover, the regulations should specify that a FHLBank's decision-making with respect to applications and AHP projects under the regulations are final, unless overturned by the Finance Board upon showing the Finance Board that a FHLBank's decision making was grossly negligent or constituted willful misconduct under the AHP regulations and applicable AHP agreements.</p>	
951.9	<b>Agreements</b>
	1. AHP Agreements. The proposed rule amends the current language to provide that a Bank's AHP agreement must bind the member to the Bank's monitoring policies and procedures to be adopted in accordance with proposed §951.7 and further requires that those policies and procedures be set forth in the agreement. Also requires member banks to have in its place its own agreement with each project sponsor and project owner.
<p><b>FHLBI comments</b></p> <p>The FHLBI believes these provisions are too onerous and burdensome, as periodic changes to the FHLBank's monitoring policies and procedures would require constant revisions to these agreements. The FHLBI would also like clarification from the FHFB as to whether these revisions would require three separate agreements (FHLBank/Sponsor; FHLBank/Member and FHLB Member/Sponsor) or whether a tri-party agreement signed by all parties would be acceptable.</p>	

	<p>2. Retention Requirements – Ownership. The proposed rule makes minor changes in the retention requirements for subsidized advances.</p>
<p><b>FHLBI comments</b></p> <p>The FHLBI recommends further changes to the current required regulatory language for owner-occupied units which states that, "in the case of a sale or refinance prior to the end of the Retention Period, an amount equal to a pro rata share of the direct subsidy that finances the purchase, construction, or rehabilitation of the property, reduced for every year the borrower has owned the property, shall be repaid to the member for reimbursement to the FHLBI from any net gain realized upon the refinancing, <i>unless the purchaser is a low- or moderate-income household.</i>" This is problematic as it seems to assume that the sale and purchase of the unit is financed with the same financial institution, which in most cases, it is not. It would be extremely difficult for unrelated financial institutions to coordinate subordination or re-recording of the existing retention agreement, income verification of the new purchaser and other details in order to facilitate the assumption of the remaining subsidy. The FHLBI would recommend that member banks have the authority to make the appropriate business decision in determining whether the remaining subsidy should be paid off or subordinated.</p>	
	<p>3. Retention Requirements – Rental. The proposed rule would revise the existing regulation by providing that in the case of sale or refinancing of an AHP-assisted rental project, the AHP subsidy would not have to be repaid "<i>if the households are relocated to another property that is subject to a deed restriction...</i>"</p>
<p><b>FHLBI comments</b></p> <p>The FHLBI recommends deleting the proposed change as it could be abused by an owner to escape recapture liability by inappropriately relocating residents in order to remove affordable units from the market. This adds an additional unnecessary layer of complexity to the monitoring process without protecting total affordable units available. We would recommend, however, that this be added as a settlement option, depending on the facts and circumstances of a particular project.</p> <p>The FHLBI strongly recommends, however, that the current full recapture requirement on rental projects be modified. It is overly burdensome and allows no flexibility for the FHLBanks to make decisions based on the circumstances leading to the recapture such as, financial distress which many times necessitates the sale or refinancing. The FHLBI recommends that the FHFB revise the current language to require full repayment only during the first seven years of the life of the project with a declining recapture amount for projects that fall out of compliance after that period. This would afford project owners at least some credit for having maintained the units in compliance for a period of time.</p>	
	<p><b>Other Recommendations</b></p>
<p><b>Scoring</b></p>	<p>The current scoring system is substantially the same system as was in place with the creation of the regulation. As such, it remains very prescriptive and allows little flexibility for the FHLBanks to be responsive to changing needs and priorities in its district. The FHLBI recommends that the FHFB utilize this proposed rule as an opportunity to enhance the scoring process in order to maintain the AHP's overall effectiveness and relevance in today's environment of affordable housing development.</p>

The FHLBI would recommend the following changes, in the absence of a major scoring overhaul.

***Option I:***

Allow FHLBanks to determine their scoring process as prescribed in the broad, general categories of the original statute which states:

“Each Bank member shall give priority to qualified projects such as the following:

- (A) purchases of homes by families whose income is 80 percent or less of the median income for the area,
- (B) purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States; and
- (C) purchase or rehabilitation of housing sponsored by any nonprofit organization, any State or political subdivision of any State, any local housing authority or State housing finance agency. See 12 U.S.C. § 1430(j)(3).”

This would allow each FHLBank the flexibility it needs to be the most responsive and current in meeting the needs in its district.

***Option II:***

**First and Second District Priority:** The FHLBI recommends consolidating the “First and Second District Priorities” into a single “District Priority” category with specific priorities to be prescribed by the FHLBanks to address needs in their respective districts which can and do differ, often significantly.

***Option III:***

Allow the FHLBanks to have multiple “Second District Priorities,” but further update the “First District Priority” with more current and relevant affordable housing issues, such as “youth transitioning from foster care,” “farm worker or migrant worker housing,” “homeless veterans reintegration” initiatives, “prisoner reentry programs,” etc. The FHLBI would also recommend the elimination of some less useful criteria such as “lender consortia” and “fair housing remedy.” In addition, the FHFB applies very restrictive interpretations of “community involvement” to include points *only* for “non-cash” assistance such as zoning changes and variances to the exclusion of points for an allocation by local or state government of “real” dollars to a project via an allocation of HOME or CDBG funds. The FHLBI recommends that the FHLBanks be allowed to define what constitutes community involvement.

***In either approach, however, it is imperative that the FHLBanks be given more flexibility to determine their own priorities for their district.***

	<p><b>Other considerations :</b></p> <p><b><u>Donated property:</u></b> Recommend removal of this as a criteria. The need or demand for affordable housing is not predicated on whether a property owner or developer has been able to purchase land from the government or whether land has been given to a project.</p> <p><b><u>Promotion of Empowerment:</u></b> The “requirement” of this category seems to make an assumption that low- and moderate-income individuals “<i>require services of empowerment.</i>” There are many, many working, low- and moderate income households who simply <i>require</i> a decent, affordable and safe place to live in a community which is healthy, accessible and provides employment and educational opportunities for their families. If it remains a mandatory category, the FHLBI recommends allowing FHLBanks to define empowerment to give scoring credit for activities or services that help individuals achieve economic (employment) <i>or personal</i> success, i.e., social; asset-building, self-sufficiency; health and wellness (physical and mental) support. These kinds of activities are so closely related to economic empowerment and the ability to <i>sustain</i> employment that it is impossible to draw such a clear distinction. In addition, seniors and senior projects benefit from amenities which enhance their quality of life, i.e., fitness programs, nutritional services, medical services, etc. Providing, facilitating access or being strategically located to these kinds of activities directly impacts the project’s likelihood of success and stability as well as that of the residents.</p> <p><b><u>Special needs:</u></b> The FHFB currently restricts special needs populations to only those specifically stated in the regulation, even though the regulation seems to indicate via the “such as” statement that other populations could be included. Populations noted above such as “farm worker or migrant worker” housing should be allowed to be included as necessitated in each district. In addition, the FHLBI recommends the elimination of the 20% reservation threshold which is contrary to current public policy which encourages the integration of individuals with disabilities into mainstream environments.</p>
<p>Revolving Loan Funds for Pre-development Costs</p>	<p>The FHLBI was recently asked by industry constituents to consider allowing a modest amount of FHLBank AHP funds to be used to assist in pre-development of affordable housing. These funds, if carefully provided, may serve as a catalyst for the creation of additional affordable housing that otherwise might not be created. This unique opportunity should be provided for in the new regulation.</p> <p>We suggest the amended AHP regulation authorize an FHLBank to apply to the Finance Board for a special AHP set-aside for revolving loan/grant funds for pre-development. The general requirements set forth in the regulation would be as follows:</p> <ul style="list-style-type: none"> <li>• Revolving loan fund set-aside program would be limited annually in an amount not to exceed \$1 million (or higher with FHFB pre-approval) of available AHP funds. The proposed consolidation provision for all set-asides (951.2(b)(2))</li> </ul>

would apply to this optional set-aside as well.

- AHP funds would be loaned or granted to a member institution, who in turn would directly or through an intermediary administrative agent, provides the funds to the AHP provider.
- The funds could be used for study, grant or other funding solicitations, pre-development infra-structure, or architectural work.
- The loan or grant would be repaid at the time of closing on the initial construction financing for the AHP project or in two years from the date of initial AHP funding, whichever is sooner. If the project were to proceed, the expenditures must directly relate to the project.
- The member or intermediary agent, upon repayment of the AHP grant or loan, may recycle the grant for other projects.
- If the initial or recycled grant did not result in the ultimate creation of affordable housing within five calendar years of the initial grant, the monies (principal only) will be returned to the FHLBank and then placed back into the regular AHP award funds.
- The obligation for repayment is an issue for further consideration and could be accomplished by a loan loss reserve account pledged by member and/or intermediary.
- The member by regulation will be required to provide an annual status report to the FHLBank on the AHP funding utilization while the grant or loans are outstanding. The performance measure that the FHLBank and its Advisory Council will monitor is the number of AHP units created, losses, utilization and recovery speed.
- Applications for the AHP funds will be submitted by the member and set-aside proceeds will be awarded by the FHLBank based on a scoring methodology which includes a review of the member's (or its intermediary) pre-development underwriting plans, history, experience, market reach and leverage. Affordability rules would be the same as for the other AHP programs.
- A member with a revolving grant or loan fund award outstanding cannot apply for additional funding under this program for a period of two calendar years and must have satisfactory performance measures as described above.
- The set-aside program for revolving loans or grants would be set forth in the FHLBank's AHP Implementation Plan. As recommended for the other revolving pools, an FHLBank, in order to exercise this authority, must first consult with its Advisory Council, and then adopt written policies and procedures governing the AHP disbursements.
- The retention agreement tied to a specific project requirements would have to be eliminated for revolving loan or grant pools. The sponsor definition would need to be expanded to include agents or intermediaries of the member that would administer the pre-development revolving loan or grant fund.

The FHLBank realizes that there are numerous other operational considerations and modifications in order to create such authority. The FHLBI would offer to do some additional evaluation and feasibility assessment on this issue in collaboration with our members and industry leaders and provide additional follow-up to the FHFB to further consider, if deemed appropriate.