

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932 and 941

[92-18]

Operations of the Office of Finance

AGENCY: Federal Housing Finance Board.**ACTION:** Interim final rule, with request for comments.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is removing selected sections from part 932 and adopting a new part 941 that will revise the regulations establishing, and governing the duties of, the Office of Finance, a joint office of the Federal Home Loan Bank System, to reflect the changes in the activities of the Office of Finance as well as to implement a restructuring of the management organization of the Office of Finance in order to improve the administration of its functions.

DATES: This rule is effective January 24, 1992. Comments must be submitted by February 24, 1992.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC, 20006.

FOR FURTHER INFORMATION CONTACT: Thomas D. Sheehan, Assistant Director, Financial Division, District Banks Directorate, (202) 408-2870, or Charles Szenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:**I. Background**

The Office of Finance of the Federal Home Loan Bank System ("FHLBank System") was created in 1972 by regulation of the former Federal Home Loan Bank Board ("FHLBB"). See 37 FR 16864 (Aug. 22, 1972). It replaced the Office of the Fiscal Agent of the FHLBanks, which had been organized in the 1930's, shortly after the establishment of the FHLBanks, by the FHLBB under the Federal Home Loan Bank Act. The creation of a Fiscal Agent of the FHLBanks facilitated the Federal Home Loan Bank Act's mandate that the FHLBB "issue" the FHLBank consolidated debentures, bonds or notes ("FHLBank consolidated obligations"). See 12 U.S.C. 1431 (b) and (c) (Supp. I 1989). Although the FHLBank consolidated obligations were issued by the FHLBB, they were obligations of the FHLBank System, not the FHLBB or the Federal government. See *id.* at 1435.

Accordingly, the Fiscal Agent issued the FHLBank consolidated obligations under authority delegated by the FHLBB, but serviced the obligations as the agent of the FHLBanks.

In 1972, the FHLBB expanded the role of the Office of Fiscal Agent to include the purchase of investment securities on behalf of the FHLBanks and to perform other miscellaneous financial functions for the FHLBanks as well as for the former Federal Savings and Loan Insurance Corporation ("FSLIC") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). In addition, the FHLBB required the Office of Finance to monitor FHLBank compliance with certain statutory or regulatory requirements and make reports of such compliance to the FHLBB. With this broader responsibility came an internal reorganization and a new name, the Office of Finance.

Significant changes since 1972 have occurred to the FHLBank System. The FHLBanks no longer use the Office of Finance in order to perform investment services on their behalf. Both FSLIC and the FHLBB have been dissolved by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183-553 (1989). The Finance Board has replaced the former FHLBB as regulator of the FHLBank System. Moreover, the Finance Board has assumed direct responsibility for monitoring the FHLBanks' compliance with statutory, regulatory or policy requirements. These changes have effectively reduced the duties of the Office of Finance, although it continues to perform certain functions on behalf of the Financing Corporation and the Resolution Funding Corporation.

This interim final rule revises the regulations governing the Office of Finance and its duties to reflect the aforementioned changes in the activities of the Office of Finance as well as to implement a restructuring of the Office of Finance in order to improve its administration.

II. Overview of Regulation

A. Summary of Changes

This regulation reorganizes the management structure of the Office of Finance by establishing a new three member administrative body, called the Office of Finance Board of Directors ("OF Board of Directors"), responsible for the operations and management of the Office of Finance. The administrative powers previously granted the Director of the Office of Finance are now to be vested in the OF Board of Directors.

The Office of Finance will continue as a joint office of the FHLBanks, organized pursuant to section 2B(b)(2) of the Bank Act (12 U.S.C. 1422b(b)(2) (Supp. I 1989)), and will continue to issue FHLBank consolidated obligations on behalf of the Finance Board. The Office of Finance will also continue to be responsible for principal and interest payments on the consolidated obligations on behalf of the FHLBanks. The references to functions no longer performed by the Office of Finance have been removed as obsolete.

B. Effect of Changes

Under the new structure, the responsibility for issuing and servicing FHLBank consolidated obligations, is delegated to the OF Board of Directors. That entity, in turn, will appoint the Director of the Office of Finance, subject to Finance Board approval, and sub-delegate to the Director the duties of the Fiscal Agent of the FHLBanks. The OF Board of Directors, in its discretion, may delegate other duties to the Director.

Under this new structure, the Director of the Office of Finance will be directly accountable to the OF Board of Directors for Office of Finance administration. The Director is retained as the managing officer of the Office of Finance, responsible for day-to-day operations.

The Finance Board will continue to exercise oversight over the OF Board of Directors and the Office of Finance. Both will be subject to the rules, regulations and policies as may be established from time to time by the Finance Board pursuant to section 2B of the Bank Act (12 U.S.C. 1422b).

C. Purpose of Changes

The purpose of these regulations is to achieve an internal reorganization of the management structure of the Office of Finance. The Finance Board does not intend to abolish the current Office of Finance or re-create or re-charter it by these regulations. Neither does the Finance Board intend to alter any duties or responsibilities of the Office of Finance regarding outstanding FHLBank consolidated obligations, or any rights of the holders of those obligations.

The Finance Board desires to improve the management control and accountability over Office of Finance activities by focusing the lines of authority and chain of command over the Office of Finance. The ultimate purpose herein is to promote cost savings for FHLBank System activities by providing for more economic and efficient Office of Finance operations.

Administrative Procedure Act

The Finance Board is adopting these regulations as an interim final rule, effective immediately. However, it is incorporating a 30-day comment period. The Administrative Procedure Act ("APA") requires executive agencies to publish a substantive rule in the Federal Register not less than 30 days prior to its effective date. 5 U.S.C. 553(b) (1988). The APA provides an exception to the 30-day publication requirement whenever the agency finds "good cause" therefor and publishes such finding with the rule. *Id.* at 553 (b)(3)(B) & (d).

The Finance Board finds such good cause in this case. The courts have found that the underlying purpose of the notice requirements for rulemaking in the APA is to allow members of the general public, who will be affected by a new rule, a reasonable time to prepare for the effective date of the rule and the consequences of the new rule. The issue of whether "good cause" exists to waive the notice requirement is decided by weighing the need to quickly implement a new rule against any hardship to members of the public affected by it. *Nance v. EPA*, 645 F.2d 701, 708 (9th Cir. 1981) *cert. denied*, 454 U.S. 1081 (1981).

This rule deals with the internal management organization of the FHLBank System. Accordingly, it will not directly result in any additional burden to, or otherwise effect, any member of the public outside the FHLBank System. However, the rule will make changes to the administration of the Office of Finance which the Finance Board has determined should be implemented immediately. The Finance Board therefore concludes that the facts weigh in favor of waiving the notice period. *Cf. id.* at 709.

The Finance Board may promulgate this rule without the notice period required by the APA as the record shows that the interests of both the FHLBank System and holders of its consolidated obligations are served by improving Office of Finance operations. *See Texaco, Inc. v. FEA*, 531 F.2d 1071, 1082 (Temp. Emer. Ct. App. 1976) *cert. denied*, 426 U.S. 941 (1976).

Although these regulations will be effective immediately, the Finance Board recognizes the importance, value and benefit of public comment and input on FHLBank operations. Accordingly, it has provided for a 30-day comment period from the date of publication of these regulations. The comments received during this 30-day period may result in revisions to these regulations after their effective date.

Regulatory Flexibility Act

In accordance with section 605(b) of title 5, United States Code, the Finance Board hereby certifies that these interim final regulations will not have a significant impact on a substantial number of small entities. The Finance Board finds that these regulations deal strictly with the internal structure and operations of the FHLBank System. Accordingly, a regulatory flexibility analysis is not necessary.

List of Subjects

12 CFR Part 932

Federal home loan banks.

12 CFR Part 941

Organization and functions (government agencies).

Accordingly, the Finance Board hereby amends its general regulations, at chapter IX, title 12, Code of Federal Regulations, as follows:

1. The authority section for part 932 continues to read in its current form.

§§ 932.55, 932.56 and 932.57 [Removed]

2. Sections 932.55, 932.56 and 932.57 are removed.

3. A new part 941 is added to read as follows:

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

941.1 Definitions.

941.2 General.

941.3 Federal Housing Finance Board oversight.

941.4 Office of Finance.

941.5 Functions of the Office of Finance.

941.6 Director of the Office of Finance.

941.7 Office of Finance Board of Directors.

941.8 Powers of the Office of Finance Board of Directors.

941.9 Duties of the Office of Finance Board of Directors.

941.10 Meetings of the Office of Finance Board of Directors.

941.11 Budget, funding and expenses.

941.12 Savings clause.

Authority: Sec. 2B, 103 Stat. 414, as amended (12 U.S.C. 1422b); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431).

§ 941.1 Definitions.

In this part, the following terms mean:

Bank. A Federal Home Loan Bank.

Bank Act. The Federal Home Loan Bank Act.

Bank System. The Federal Home Loan Bank System, consisting of the twelve Federal Home Loan Banks and including the Office of Finance as a joint office of the Federal Home Loan Banks.

Chair. The Chairperson of the Office of Finance Board of Directors.

Consolidated obligation. A Federal Home Loan Bank consolidated debenture, bond or note issued under

authority of section 11 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1431).

Director. The Director of the Office of Finance.

Finance Board. The Federal Housing Finance Board.

OF Board of Directors. The three member administrative body responsible for management of the Office of Finance.

§ 941.2 General.

This part reorganizes the Office of Finance, a joint office of the Bank System, establishes the OF Board of Directors as the body responsible for the management and operations of the Office of Finance, and defines their respective duties and responsibilities.

§ 941.3 Federal Housing Finance Board oversight.

(a) Section 12(a) of the Bank Act (12 U.S.C. 1432(a)) provides that all activities of a Bank are subject to the approval of the Finance Board. The Finance Board retains the same oversight authority over the Office of Finance and the OF Board of Directors as it has over a Bank and its respective board of directors.

(b) Pursuant to section 20 of the Bank Act (12 U.S.C. 1440), the Finance Board shall audit and examine the Office of Finance, the OF Board of Directors and the Office of Finance Operations Imprest Fund.

§ 941.4 Office of Finance.

(a) *Establishment.* An Office of Finance is hereby established which shall have the responsibilities, duties and functions described herein.

(b) *Status.* The Office of Finance is recognized as a joint office of the Bank System.

(c) *Mission.* The Office of Finance shall:

(1) Issue the consolidated obligations pursuant to section 11 of the Bank Act, as amended (12 U.S.C. 1431);

(2) Perform all other necessary and proper functions in relation to the consolidated obligations, as fiscal agent on behalf of the Banks; and

(3) Undertake any other activities expressly approved by the Finance Board.

§ 941.5 Functions of the Office of Finance.

Subject to limitations set by the OF Board of Directors, the Office of Finance shall have the following duties and functions:

(a) Conduct all negotiations relating to the public or private offering and sale of consolidated obligations, and perform such other related functions as may be

authorized by resolution of the Finance Board;

(b) Perform such functions for the Financing Corporation and/or the Resolution Funding Corporation, on behalf of the Banks, as may be requested by each such entity; and

(c) Make timely payments on behalf of the Banks of principal and interest due on all consolidated obligations issued pursuant hereto.

§ 941.6 Director of the Office of Finance.

(a) The Office of Finance shall be headed by a Director who shall be responsible for the overall daily management of the Office of Finance functions and organization, including:

(1) Implementation of the OF Board of Directors' plans and policies for the administration of the Office of Finance;

(2) Organization and development of the personnel structure of the Office of Finance;

(3) Employment and management of personnel;

(4) Preparation of the budget for presentation to the OF Board of Directors pursuant to § 941.11; and

(5) Performance of any duty assigned by the OF Board of Directors, including providing it any records, reports or other data in the possession of the Office of Finance whenever requested to do so.

(b) The Director shall perform the duties described herein and the functions of the Office of Finance subject to the policies adopted by the OF Board of Directors.

(c) The Director shall be:

(1) The Fiscal Agent of the Federal Home Loan Banks;

(2) A member of the Directorate of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441(b)(1)(A)); and

(3) A member of the Directorate of the Resolution Funding Corporation, pursuant to section 41B(c)(1)(A) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441b(c)(1)(A)).

§ 941.7 Office of Finance Board of Directors.

(a) *Establishment.* The Office of Finance Board of Directors is hereby created.

(b) *Use of facilities or personnel.* The OF Board of Directors may utilize the facilities or personnel of the Office of Finance or any Bank in order to perform its functions.

(c) *Membership.* The OF Board of Directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) *Bank System.* Two Bank Presidents; and

(2) *Private Citizen.* A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any FHLBank consolidated obligation selling or dealer group member under contract with the Office of Finance.

(d) *Terms—(1) Length.* Except as provided below, the terms of the OF Board of Directors members shall be as follows:

(i) The terms of the two Bank President members shall be for two years, beginning on April 1st, and each term shall begin and end in alternate years staggered with the other term;

(ii) The term of the Private Citizen member shall be for two years, beginning on April 1st.

(2) *Vacancy.* The Finance Board shall fill any vacancy occurring on the OF Board of Directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) *Holdover.* At the direction of the Finance Board, any member of the OF Board of Directors is authorized to continue to serve on the OF Board of Directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(4) *Initial terms.* Notwithstanding paragraph (d)(1) herein, the terms of the members of the first OF Board of Directors convened pursuant to this part shall be as follows:

(i) The initial term of one of the Bank President members shall be from the date of appointment until March 31, 1993, and the initial term of the other shall be from the date of appointment until March 31, 1994;

(ii) The initial term of the Private Citizen member, as selected by the Finance Board, shall be from the date of appointment until March 31, 1994.

(e) *Chair.* (1) The Finance Board shall designate one member of the OF Board of Directors as the Chair, and another member as the Vice Chair.

(2) The Chair shall preside over the meetings of the OF Board of Directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF Board of Directors are drafted and maintained and for keeping the minutes of all meetings.

(f) *Compensation—(1) Bank System members.* (i) The Bank President members shall not receive any additional compensation or

reimbursement as a result of their service on the OF Board of Directors.

(ii) Each Bank is authorized to continue to pay its President a salary during attendance at the OF Board of Directors meetings and to pay such President's travel and *per diem* expenses for attendance at OF Board of Directors meetings.

(iii) Each Bank shall be entitled to be reimbursed by the Office of Finance for its expenditure of travel and *per diem* expenses associated with its Bank President's attendance at OF Board of Directors meetings as a member thereof.

(2) *Private Citizen member—*The Office of Finance shall pay the Private Citizen member of the OF Board of Directors for attendance at each meeting thereof and shall reimburse such member for the expenses associated with attendance in the same amount and under the same conditions as the Banks pay and reimburse the chairmen of their boards of directors.

§ 941.8 Powers of the Office of Finance Board of Directors.

(a) *General.* The OF Board of Directors shall enjoy such incidental powers under section 32(a) of the Bank Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient operation and management of the Office of Finance pursuant to this part.

(b) *Agent.* Subject to any limitations set by the Finance Board, the OF Board of Directors, in the performance of its duties, shall have the power to act:

(1) On behalf of the Finance Board in the issuing of consolidated obligations; and

(2) On behalf of the Banks in the paying of principal and interest due on the consolidated obligations.

(c) *Delegation.* The OF Board of Directors shall be empowered to delegate any of its powers to any employee of the Office of Finance in order to enable the Office of Finance to carry out its functions.

§ 941.9 Duties of the Office of Finance Board of Directors.

(a) *General—(1) Bylaws.* The OF Board of Directors shall adopt bylaws governing its operations and issue such guidance or instructions as will promote the efficient operation of the Office of Finance.

(2) *Conduct of Business.* The OF Board of Directors shall conduct its business by majority vote of its members convened at a meeting in accordance with its bylaws.

(b) *Oversight.* The OF Board of Directors shall:

(1) Have overall responsibility for the performance of the duties and functions of the Office of Finance pursuant hereto and for its efficient and effective operation;

(2) Set policies for the Office of Finance;

(3) Approve a strategic business plan for the Office of Finance and monitor the progress of its operations under such plan;

(4) Subject to Finance Board approval, review, adopt and monitor the annual operating budget of the Office of Finance including any supplemental expenditure thereto;

(5) Develop and implement the pricing mechanism by which the Office of Finance will make private or public offerings of consolidated obligations, in consultation with the Finance Board or its designee;

(6) Subject to Finance Board approval, select and employ the Director under an annual contract of employment;

(7) Review and approve all contracts of the Office of Finance; and

(8) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

§ 941.10 Meetings of the Office of Finance Board of Directors.

(a) *Meetings.* (1) The OF Board of Directors shall adopt procedures for holding meetings which shall be set forth in the bylaws and such meetings shall be held not less than once each quarter of each year.

(2) Due notice shall be given to the Finance Board by the Chair prior to each meeting.

(b) *Quorum.* A quorum for purposes of OF Board of Directors meetings shall be three members.

§ 941.11 Budget, funding and expenses.

(a) *General.* The budget of the Office of Finance shall be calculated on a calendar year basis.

(b) *Initial review.* The OF Board of Directors shall be responsible for initially reviewing and approving the budget of the Office of Finance, which shall include the budget for the OF Board of Directors.

(c) *Agency review.* After its approval of the budget, pursuant to paragraph (b) herein, the OF Board of Directors annually shall submit the Office of Finance budget to the Finance Board for its review and approval. Upon approval by the Finance Board, the OF Board of Directors shall transmit a copy of the budget to each of the Bank Presidents.

(d) *Expenses.* Upon the approval of the budget by the Finance Board in accordance with paragraph (c) herein,

the OF Board of Directors may authorize the Director to make payments pursuant to the budget as necessary.

(e) *Imprest fund*—(1) *Checking account*. The Office of Finance shall establish a checking account in a financial depository institution approved by the OF Board of Directors, to be called the "Office of Finance Operations Imprest Fund." The Director shall maintain an amount therein approved by the OF Board of Directors.

(2) *Use*. The funds in such checking account shall be:

(i) Available for expenses of the Office of Finance and the OF Board of Directors, according to their approved budgets; and

(ii) Subject to withdrawal by check or draft signed by the Director or other person designated by the OF Board of Directors.

(f) *Funding*—(1) *General*. The Bank System is responsible for funding the expenses of the Office of Finance and the OF Board of Directors.

(2) *Method*. (i) The Banks shall jointly fund the Office of Finance by periodically reimbursing the Office of Finance Operations Imprest Fund in order to maintain in such Fund the amount approved in paragraph (e)(1) herein.

(ii) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (f)(2)(i) herein shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(iii) Notwithstanding the formula devised herein, the OF Board of Directors may devise an alternative formula for determining each Bank's respective share of Office of Finance expenses. Upon approval by the Finance Board, such alternative formula shall supersede the formula devised herein.

(3) *Payment*. Each Bank from time to time shall promptly forward funds to the Office of Finance in an amount representing its share of the reimbursement described in paragraph (f)(2)(i) herein when directed to do so by the Director pursuant to procedures of the OF Board of Directors.

(4) *Receipt*. All Bank funds received by the Office of Finance pursuant to this section shall be promptly deposited into the checking account described in paragraph (e)(1) herein and disbursed according to this part.

(5) *Procedures*. The OF Board of Directors shall adopt procedures governing the payment or reimbursement of expenses of the Office of Finance and the OF Board of Directors.

§ 941.12 Savings clause.

(a) The Office of Finance Operations Imprest Fund is available to pay for all expenses of the Office of Finance existing prior to the adoption of this part.

(b) All actions taken by the Office of Finance as it existed prior to the adoption of this part continue to be valid as regards the Finance Board and the Bank System.

(c) Notwithstanding any provision of this part, the Office of Finance or its Director may continue to exercise any powers delegated to it by the Finance Board or the former Federal Home Loan Bank Board, which they exercise on the date of the adoption of this part, until the first meeting of the OF Board of Directors created pursuant hereto.

Dated January 16, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.

Chairman.

[FR Doc. 92-1727 Filed 1-23-92; 8:45 am]

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