

TABLE 3.—PROJECTED BIF RATIOS
[\$ in millions]

	June 30, 1996	
Adjusted Fund Balance ¹	\$25,888	
Estimated Insured Deposits ² ...	1,986,578	
Adjusted BIF Ratio ¹	1.30	
	Lower bound ³ June 30, 1997	Upper bound ⁴ June 30, 1997
Projected Fund Balance	\$25,991	\$26,897
Estimated Insured Deposits	2,085,907	1,946,846
Estimated BIF Ratio	1.25	1.38

¹ The BIF balance includes the \$60 million reserve reversal for two institutions.

²As a result of the DIFA, the SAIF insured deposits of certain Oakar institutions have been decreased by \$28.2 billion and their BIF insured deposits have been increased by the same amount. Estimated insured deposits as of 6/30/96 have thus been adjusted by this amount.

³The lower bound refers to the scenario of lower interest income (interest rate: 5.7%), higher insurance losses (\$700 million) and a higher insured deposit growth rate (+5%).

⁴The upper bound refers to the scenario of higher interest income (interest rate: 6.2%), a reduction in insurance losses (-\$100 million) and a shrinkage of the insured deposit base (-2%).

TABLE 4.—ASSESSMENT RATE SCHEDULE FIRST SEMI-ANNUAL 1997 ASSESSMENT PERIOD BIF-INSURED INSTITUTIONS

Capital group	Supervisory risk subgroups		
	Group A (bp)	Group B (bp)	Group C (bp)
Well	0	3	17
Adequate	3	10	24
Under	10	24	27

TABLE 5.—BIF ASSESSMENT BASE DISTRIBUTION¹; DEPOSITS AS OF JUNE 30, 1996²; SUPERVISORY AND CAPITAL RATINGS IN EFFECT JULY 1, 1996

Capital group	Supervisory risk subgroups					
	A		B		C	
Well:		(percent)		(percent)		(percent)
Number	9,538	94.4	368	3.6	59	0.6
Base (\$ billion)	2,415.7	96.8	35.9	1.4	3.8	0.2
Adequate:						
Number	73	0.7	19	0.2	17	0.2
Base (\$ billion)	32.6	1.3	2.4	0.1	1.5	0.1
Under:						
Number	6	0.1	1	0.0	18	0.2
Base (\$ billion)	0.5	0.0	0.3	0.0	1.7	0.1

Estimated annual assessment revenue³: \$43 million.

Assessment Base: \$2,494 billion.

Average annual assessment rate (bp)³: 0.17 basis points.

¹ "Number" reflects the number of BIF members and SAIF-member Oakar institutions; "Base" reflects the BIF-assessable deposits of BIF members and SAIF-member Oakar institutions.

² Figures do not reflect the adjusted attributable deposit amount reduction for certain BIF-member Oakars, effective 9/30/96.

³ Assumes a refund of \$500 with interest, for BIF 1A institutions and no \$1,000 minimum semiannual BIF assessment in 1997.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 902

[No. 96-81]

Procedure for Consideration of Regulatory Waivers

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting a final rule amending its agency operations regulation to include a provision setting forth guidelines for requesting waivers of Finance Board regulatory provisions not required by

statute in appropriate circumstances. This final rule is being published in compliance with the Freedom of Information Act, which requires publication of agency rules of procedure.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel (202) 408-2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Analysis

Although, as a general rule, an agency may not grant exceptions to its rules in individual cases, even to achieve what the agency believes to be justice in an individual case, courts have held that an agency may, in particular cases of

hardship, exercise its discretion and waive regulatory provisions that are not required by statute, where the agency has established a rational process for the granting of waivers. In order to establish guidelines for such a process and to inform interested parties of such guidelines, the Finance Board is amending part 902 of its regulations, 12 CFR part 902, to add a provision governing Finance Board consideration of requests for waivers of provisions of its regulations, 12 CFR ch. IX, that do not implement mandatory statutory requirements.

Any decision to suspend, waive, or grant an exception to a consistently applied general rule is subject to close and careful scrutiny by a reviewing court, although a waiver of a rule that affects the substantive rights or interests of a party is typically subject to a higher

degree of judicial scrutiny than a waiver of a procedural rule. Therefore, the burden is on the party seeking the waiver to plead with particularity the facts and circumstances that warrant granting the request. In particular, the waiver application must demonstrate that the arguments in support of the request are substantially different from those that were considered during the rulemaking process. Further, because an agency's decision to grant an exception in a certain case could create a precedent that other similarly situated waiver applicants may seek to rely on, the reasons supporting the decision to grant a waiver must be stated clearly on the record.

Although the Finance Board places the highest priority upon the consistent application of its regulations, the agency also believes that its regulations are intended to further the purposes of the Federal Home Loan Bank Act (Bank Act) and that, to the extent that the application of any regulatory provision to a particular person or entity might be inconsistent with these purposes, waiver of the provision with respect to that person or entity should be considered. For this reason, paragraph (a) of new § 902.6 provides that the Finance Board, in its discretion and in connection with a particular transaction, may waive any of its regulatory requirements or any required submission of information not otherwise mandated by statute if it determines, based on the facts presented, that application of the provision to the party requesting the waiver would contravene the goals of the Bank Act.

In addition, § 902.6(a) permits waiver of a regulatory provision if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, where the Finance Board determines that the person or entity requesting the waiver has otherwise made an adequate showing of good cause. Such "good cause" should be based upon factors that have not already been thoroughly addressed during the regulatory process that preceded adoption or amendment of the provision and may include a showing that the requirement is unnecessary or that the requirement would impose unnecessary burden or hardship on the requestor. In accordance with existing case law, the burden upon the party requesting waiver of a rule that affects substantive rights or interests will be greater than that upon a party seeking waiver of a procedural rule.

For purposes of recordkeeping, notice and efficient processing, § 902.6(b)(1) requires that any waiver request be filed with the Finance Board's Executive

Secretary and, where a Federal Home Loan Bank member institution is making the request, with the Bank of which the institution is a member. Finally, in order to ensure that there is an adequate record upon which to make a determination, § 902.6(b)(2) requires that the waiver request clearly and specifically set forth all pertinent facts and analyze all legal issues relevant to the waiver determination.

II. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the waiver request collection of information contained in § 902.6. The Finance Board will use the information collection to determine whether a party that requests a waiver of Finance Board regulatory provisions with respect to a particular transaction has satisfied the regulatory requirements for granting such a waiver. Individuals or entities must meet the regulatory standards in order for the Finance Board to consider a waiver request. Responses are required to obtain or retain a benefit. The Finance Board will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy.

Likely respondents and/or recordkeepers will be Federal Home Loan Banks, institutions that are members of a Bank and the Finance Board. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. See 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents	12
b. Total annual responses	12
Percentage of these responses collected electronically	0%
c. Total annual hours requested	928
d. Current OMB inventory	0
e. Difference	928

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs	0
b. Total annual costs (O&M) ...	0
c. Total annualized cost requested	\$35,732.32
d. Current OMB inventory	0
e. Difference	\$35,732.32

Mail comments concerning the accuracy of the burden estimates and suggestions for reducing the burden to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F

Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address. The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507(c) of the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507(c), and 5 CFR 1320.10. Comments regarding the collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503 by January 6, 1997.

III. Other Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" under Executive Order 12866.

The notice and comment procedures requirements of the Administrative Procedures Act are inapplicable to this rule of agency procedure, pursuant to 5 U.S.C. 553(b)(3)(A).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 12 CFR Part 902

Assessments, Federal home loan banks, Government contracts, Minority businesses, Mortgages, Reporting and recordkeeping requirements. Accordingly, title 12, chapter IX, part 902, Code of Federal Regulations, is hereby amended as follows:

PART 902—OPERATIONS

1. The authority citation for part 902 is revised to read as follows:

Authority: 12 U.S.C. 1422b, 1438(b), 1833e.

2. Section 902.6 is added to read as follows:

§ 902.6 Procedure for consideration of waiver of regulatory provisions.

(a) *Authority.* The Finance Board reserves the right, in its discretion and in connection with a particular transaction, to waive any provision, restriction, or requirement of this chapter, or any required submission of information, not otherwise required by law, if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination by the Finance Board that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Federal Home Loan Bank Act, or upon a showing of good cause.

(b) *Waiver requests.* Any person or entity may file a written waiver request with the Finance Board.

(1) *Procedure.* Any request for a waiver shall be filed with the Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, and, if from a Bank member institution, with the appropriate Bank.

(2) *Documentation.* A waiver request shall include the following:

(i) A detailed statement of facts, including the provisions of this chapter to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(ii) An analysis of each legal issue raised.

Dated: November 7, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,
Chairman.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AE60

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Growth Impairment Listings

AGENCY: Social Security Administration.
ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) adjudicates claims at the third step of its sequential process for evaluating disability using the Listings of Impairments under the Social Security and supplemental security income (SSI) programs. This rule extends until December 7, 1998 the date on which the growth impairment listings contained in Part B of the listings will no longer be effective. We have made no revisions to the medical criteria in the growth impairment listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on growth impairments in individuals under age 18 at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Regarding this Federal Register

document—Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1758; regarding eligibility or filing for benefits—our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: On December 6, 1985, we published revised listings, including the growth impairment listings (50 FR 50068), in appendix 1 (Listing of Impairments) to subpart P of part 404. We use the listings at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The listings are divided into part A and part B. We use the criteria in part A to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used. The growth impairment listings apply only to individuals under age 18 and are contained in Part B of the listings.

When we published the revised listings in 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established a date of December 6, 1993, for the growth impairment listings in part B, on which those listings would no longer be effective unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. Subsequently, the Secretary issued a final rule on December 6, 1993 (58 FR 64121), extending the date on which the growth impairment listings in part B would no longer be effective to December 6, 1996. Section 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103-296 transferred the responsibility for administering the Social Security and SSI programs from the Secretary to the Commissioner of Social Security (the Commissioner).

In this final rule, we are extending for two years, to December 7, 1998, the date on which the growth impairment listings will no longer be effective. We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is

medically or functionally equivalent in severity to an impairment in the listings, we will find that the individual is disabled at the third step of the sequential process for evaluating disability.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103-296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which the growth impairment listings will no longer be effective. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the growth impairment listings. However, without an extension of the expiration date for the growth impairment listings, we will lack regulatory guidelines for assessing growth impairments at the third step of the sequential evaluation processes after the current expiration date of the listings. In order to ensure that we continue to have regulatory criteria for assessing these impairments under the listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.