

**PART 1651—DEATH BENEFITS**

1. The authority citation for part 1651 continues to read as follows:

**Authority:** 5 U.S.C. 8424(d), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

2. Section 1651.1 is amended by adding in alphabetical order the definitions of "C Fund", "F Fund", "G Fund", and "Investment fund", to read as follows:

**§ 1651.1 Definitions.**

\* \* \* \* \*

*C Fund* means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

\* \* \* \* \*

*F Fund* means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

*G Fund* means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

*Investment fund* means the C Fund, the F Fund, the G Fund, or any other TSP investment fund created subsequent to December 27, 1986;

\* \* \* \* \*

3. Section 1651.2 is amended by adding a new paragraph (c) to read as follows:

**§ 1651.2 Entitlement to benefits.**

\* \* \* \* \*

(c) If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the Board will transfer the entire account into the G Fund after receiving written notice of the participant's death. The account will continue to accrue earnings at the G Fund rate in accordance with part 1645 until it is paid in accordance with the order of precedence set forth in paragraph (a) of this section.

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**FEDERAL HOUSING FINANCE BOARD****12 CFR Part 910**

[No. 99-5]

RIN 3069-AA78

**Allocation of Joint and Several Liability on Consolidated Obligations Among the Federal Home Loan Banks**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing a

rule to establish a framework for the orderly allocation of joint and several liability among the Federal Home Loan Banks (FHLBank or Bank) on consolidated obligations, *i.e.*, bonds, notes or debentures issued by the Finance Board pursuant to section 11 of the Federal Home Loan Bank Act (Bank Act). The proposed rule is intended to protect holders of consolidated obligations to the greatest extent practical by providing a framework to ensure the continued timely payment of all principal and interest on consolidated obligations in the unlikely event of a projected inability of a Bank to meet its debt service payment obligations. The proposed rule in no way would limit, restrict or diminish the joint and several liability of the FHLBanks on the consolidated obligations issued by the Finance Board.

**DATES:** The Finance Board will accept comments on the proposed rule in writing on or before April 12, 1999.

**ADDRESSES:** Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at [bakere@fhfb.gov](mailto:bakere@fhfb.gov) or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Joseph McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, by telephone at (202) 408-2845 or by electronic mail at [mckenziej@fhfb.gov](mailto:mckenziej@fhfb.gov), or Charlotte A. Reid, Special Counsel, Office of General Counsel, by telephone at (202) 408-2510, by electronic mail at [reidc@fhfb.gov](mailto:reidc@fhfb.gov), or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Bank Act, *see* 12 U.S.C. 1421 *et seq.*, provides plenary authority to the Finance Board in connection with the issuance of bonds, debentures and notes (consolidated obligations or COs) for which the FHLBanks are jointly and severally liable.<sup>1</sup> Section 11 of the Bank

<sup>1</sup> A bond, note or debenture represents a loan made to the FHLBanks by a lender ("bondholder"). When the Finance Board issues a bond, note or debenture on behalf of the FHLBanks, the FHLBanks become legally obligated by the terms of the instrument to repay a specific amount of money, at a specific point in time, at a specified rate of interest. In practice, the FHLBanks receiving the proceeds of the issuance assume the obligation to service the principal and interest payments for that issuance on behalf of all of the FHLBanks. Interest payments on bonds usually are made twice a year. Because the Bank Act specifies that the FHLBanks are jointly and severally liable on the consolidated obligations issued by the Finance Board for the

Act authorizes the Finance Board to issue rules and regulations governing the issuance of COs. *See* 12 U.S.C. 1431(a). Finance Board regulations governing the issuance of COs are set forth in 12 CFR Parts 910 and 941.

The FHLBanks finance their operations principally with the proceeds from COs issued by the Finance Board on their behalf. As of September 30, 1998, there were approximately \$336.3 billion in consolidated obligations outstanding. In the history of the FHLBank System, no FHLBank has ever been delinquent or defaulted on a principal or interest payment on any consolidated obligation issued by the Finance Board or the Federal Home Loan Bank Board, its predecessor agency (FHLBB).

Neither the Finance Board nor the FHLBB adopted regulations to establish the manner in which the joint and several liability of the FHLBanks would operate in the event of impending default or delinquency on a consolidated obligation. Although the FHLBank System remains financially healthy and strong, and no such default or delinquency is expected, the joint and several liability has become a matter of interest in recent years for other reasons. The municipal bankruptcy and resulting receivership of the County of Orange, California (Orange County), and the ensuing litigation brought by the receiver for Orange County against the FHLBanks, Office of Finance and United States (among others),<sup>2</sup> raised issues concerning liability allocation arising from issuing and servicing consolidated obligations. Additionally, new initiatives and activities undertaken by the FHLBanks, such as the Mortgage Partnership Finance™, pilot program

benefit of the FHLBanks, each FHLBank is liable for the repayment of the entire debt, including the interest payments, for each consolidated obligation. Consolidated obligations are sold in book entry form. The owner of the bond, note or debenture has no certificate, and there is no trust indenture associated with the issuance. Standard & Poors and Moody's are the two primary rating services that rate bonds. The rating services have developed a letter ranking system to indicate their assessment of the likelihood of default of the instruments rated. Bonds rated AAA by Standard & Poors and Aaa by Moody's are the highest quality debt obligations. All consolidated obligation bonds are rated AAA or Aaa.

<sup>2</sup> *See County of Orange, et al. v. Federal Home Loan Bank of Boston, et al.*, Case No. SA VC 97-122-GLT (C.D. Cal.). *See also County of Orange et al. v. Bear Stearns, & Co., et al.*, Case No. SA CV 98-0527-GLT, *et al.* (C.D. Cal.) (Order granting good faith settlement determinations entered November 30, 1998.) (Orange County agreed to drop all claims against the FHLBank System in connection with a settlement reached with Merrill, Lynch & Co. The FHLBanks, Office of Finance, and United States deny any wrongdoing and will not pay any amount in connection with the settlement.)

have caused at least one FHLBank to suggest that it would be beneficial to clarify how the joint and several financial responsibility for the consolidated obligations would be allocated among the FHLBanks if a FHLBank were to experience a payment problem. The Finance Board believes that it is prudent to clarify for holders of COs how they will benefit from the statutory joint and several liability of the FHLBanks set forth in section 11 of the Bank Act and to clarify for the FHLBanks how their joint and several obligation would operate. The Finance Board also believes it is important to emphasize the Finance Board's intent that holders of COs will never experience an interruption in the flow of interest or principal payments. The regulatory proposal is designed to prevent delinquency in payment, to establish a payment priority system, and to specify as a regulatory matter that the Finance Board has ultimate authority and discretion at any time to call on any FHLBank to make those payments.

The Finance Board cannot and does not seek to alter the statutory joint and several liability of the FHLBanks for COs. Rather, pursuant to its authority to ensure that the FHLBanks remain able to raise funds in the capital markets and to adjust the relative equities among the FHLBanks in connection with the issuance of COs, see 12 U.S.C. 1422a(a)(3)(B)(iii) and 1431(d), the Finance Board is proposing to establish a procedure to assure timely interest and principal payments on COs and a system of priorities among the FHLBanks under which the assets of a FHLBank participating in the proceeds of a consolidated obligation issuance would be applied first toward the satisfaction of that consolidated obligation before the assets of any other FHLBank would be reached.

## II. Statutory and Regulatory Background

The Finance Board, consistent with its primary duty to ensure that the FHLBanks operate in a financially safe and sound manner, must "ensure that the FHLBanks remain adequately capitalized and able to raise funds in the capital markets." See 12 U.S.C. 1422a(a)(3)(A) and (3)(B)(iii). Pursuant to the authority set forth in sections 11(b) and (c) of the Bank Act, the Finance Board may issue consolidated FHLBank debentures or bonds which "shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as the [Finance] Board may prescribe." See 12 U.S.C. 1431(b) and (c). Moreover,

section 11(d) of the Bank Act provides that the Finance Board shall have full power to require the FHLBanks to "deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks." 12 U.S.C. 1431(d).

The FHLBanks collectively are the sole obligor on COs. The Bank Act makes clear that COs are not the obligations of and are not guaranteed by the United States. See 12 U.S.C. 1435. Congress underscored this important precept when it enacted the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which provides in pertinent part:

This chapter may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to \* \* \* the Federal Home Loan Banks, or to honor, reimburse, or otherwise guarantee any obligation or liability of the \* \* \* Federal Home Loan Banks. This chapter may not be construed as implying that any such \* \* \* Bank, or any obligations or securities of such \* \* \* Bank, are backed by the full faith and credit of the United States.

Pub. L. 102-550, 106 Stat. 3944, tit. XIII, sec. 1304 (Oct. 28, 1992), codified at 12 U.S.C. 4503.

The issuance of COs is governed by Finance Board regulations set forth in 12 CFR Parts 910 and 941. The Finance Board sets the general parameters for the issuance of COs through periodic debt authorizations. See, e.g., Finance Board Res. No. 98-59 (Dec. 2, 1998).

As originally enacted in 1932, section 11 of the Bank Act made no provision for the Finance Board's predecessor, the FHLBB, to issue COs on behalf of the FHLBanks. Section 11 permitted the FHLBanks, under certain conditions, to issue debt individually or in concert with one or more other FHLBanks. In all cases, as originally enacted, section 11 required that "the [FHL]Banks shall be jointly and severally liable for the payment when due of all bonds and debentures, and of notes and other obligations issued by any [FHL]Bank." 12 U.S.C. 1431 (1932). The FHLBanks were permitted to make agreements to ensure the payment of such obligations, so long as the agreements did not restrict in any way the FHLBanks' joint and several liability. Thus, under the original statutory scheme, the FHLBanks were jointly and severally liable for the debt of any FHLBank and were required (subject to the rules, regulations and orders of the FHLBB) to make provisions for the payment of their obligations on the bonds, etc., so long as there was no restriction on the joint and several liability of the FHLBanks. To date, no FHLBank has issued any debt instrument in the capital markets. See

H.R. Rep. No. 1922, 73rd Cong., 2d Sess., at 72-74 (1934).

In 1934, Congress amended section 11 of the Bank Act to give the FHLBank System more ready access to the capital markets. Section 503 of the National Housing Act of 1934 amended section 11 of the Bank Act to authorize the FHLBB to issue consolidated obligations on which the FHLBanks would be jointly and severally liable. 12 U.S.C. 1431(b) and (c). The constraints on the FHLBanks' power to issue debt contained in section 11 as originally enacted were replaced by a provision that made the FHLBanks' power to issue debt "generally subject to the rules and regulations prescribed by the Federal Home Loan Bank Board." 12 U.S.C. 1431 (1932). The 1934 amendments also eliminated the requirement that the FHLBanks must be jointly and severally liable for any individual FHLBank's issuance. Section 11 as it reads now is essentially unchanged from the 1934 amendments.

Sections 11(b) and (c) of the Bank Act provide that every consolidated obligation "shall be the joint and several liability of all [FHL]Banks. \* \* \*" See 12 U.S.C. 1431(b) and (c). The imposition of joint and several liability means that each FHLBank is an obligor on every consolidated obligation; that is, each FHLBank is bound jointly with all other FHLBank-obligors and is liable separately for the entire obligation.<sup>3</sup> The legal effect of joint and several liability is that a "creditor may sue one or more of the parties to such liability separately, or all of them together at his option."<sup>4</sup>

Pursuant to the statutory authority recited above, the Finance Board has promulgated regulations governing the issuance of consolidated obligations. In 1989, Congress authorized the Finance Board to maintain the Office of Finance, a joint office of the FHLBanks, and to delegate the ministerial functions associated with the issuance of the consolidated obligations. See 12 U.S.C. 1422b(b)(1) and (2). See also Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, 103 Stat. 183, tit. VII, sec. 702, Aug. 9, 1989. Accordingly, the Finance Board delegated to the Office of Finance the authority to issue consolidated obligations under section 11 of the Bank Act subject to Finance Board regulations, resolutions or

<sup>3</sup> See Williston & Jaeger, 2 A Treatise on the Law of Contracts § 316 (3d ed., 1959).

<sup>4</sup> See Black's Law Dictionary 751 (5th ed. 1979). "On such a contract each obligor is liable severally or jointly with his co-obligors for all of the damages caused by a breach. There is, therefore, one more cause of action than there are obligors." *Id.*

policies. See 12 CFR 900.30. The operations of the Office of Finance are governed by regulations promulgated by the Finance Board in 12 CFR Part 941.

The issuance of the consolidated obligations is governed by the regulations set forth in 12 CFR Parts 910 and 941. The Finance Board also adopted a regulation that provides for a leverage limit on the issuance of consolidated obligations. The rule prohibits the issuance of senior bonds where immediately following such issuance the aggregate amount of senior bonds and unsecured, senior liabilities would exceed twenty times the total paid-in capital stock, retained earnings, and reserves (exclusive of loss and deposit reserves required pursuant to section 1431(g) of all of the FHLBanks).<sup>5</sup> Additionally, the Finance Board promulgated a regulation requiring the FHLBanks to maintain certain assets at all times free of lien or pledge (the so-called "negative pledge" requirement) to ensure sufficient collateralization of the consolidated obligations.<sup>6</sup> Since the Finance Board was authorized to issue consolidated obligations on which the FHLBanks are jointly and severally liable, no FHLBank has defaulted on any principal or interest payment.

Under the present system, a FHLBank that needs funds for its operations contacts the Office of Finance to begin negotiations with one or more of the numerous broker-dealers who have been pre-screened and qualified by the Office of Finance to purchase and resell consolidated obligations in the capital markets. Once the parties are in agreement on the terms of the

obligation, offering documents are prepared and the Office of Finance issues instructions for the delivery of the consolidated obligation to, and simultaneous receipt of the proceeds from, the purchaser through the electronic payment system operated by the Federal Reserve Bank of New York ("FEDWIRE"). A "Master Fiscal Agency Agreement" is in place between the FHLBanks and the Board of Governors of the Federal Reserve System for this purpose. The Office of Finance has an account at the Federal Reserve Bank of New York (NY Fed) that is used to effect delivery and payment transactions. Pursuant to FEDWIRE instructions from the Office of Finance, the NY Fed credits OF's account with the proceeds of a consolidated obligation issuance. Likewise, the NY Fed debits OF's account for interest and principal payments on a consolidated obligation. (In some cases, more than one FHLBank may participate in an issuance, and is entitled to the proceeds in the proportions agreed upon, and required to make principal and interest payments accordingly.) At the end of each business day, the OF nets the proceeds against the principal and interest payments due for each participating FHLBank. While a participating FHLBank is obligated to make the principal and interest payments on its consolidated obligations, all FHLBanks, by law, are jointly and severally liable for the interest and principal payments on all consolidated obligations, which is stated on the face of the Offering Circular.

The likelihood of a delinquency or default on a consolidated obligation has been and continues to be extremely remote. In order to avoid the possibility of such delinquency or default on a consolidated obligation, however remote, the Finance Board believes it is important to adopt a regulation that will codify the authority of the Finance Board to act promptly to intercede before any substantial deterioration of a FHLBank's earnings, and to ensure the continued timely servicing of any and all COs. To the maximum extent possible under the law, holders of consolidated obligations will have first priority in any payment plan. The FHLBanks that participate in a consolidated obligation will be called upon to use all of their available assets to make good on their payment obligations. Any non-participating FHLBank that makes an interest payment or otherwise makes good on a consolidated obligation shall be entitled to reimbursement from the participating FHLBanks and all other FHLBanks as

the Finance Board determines pursuant to this proposed rule.

### III. Analysis of Proposed Rule

In furtherance of the Finance Board's duties to ensure that the FHLBanks operate in a safe and sound manner and are able to obtain funding in the capital markets, the proposed rule sets forth the means by which the Finance Board will apportion the joint and several liability on consolidated obligations among the FHLBanks. The proposed rule would establish a process by which the Finance Board would look first to the assets of a FHLBank that received the proceeds of a consolidated obligation to make the principal and interest payments on that consolidated obligation, and defines such a FHLBank as a "participating FHLBank" for purposes of that issuance. The proposed rule would define a FHLBank that projected a net loss, non-compliance with statutory and regulatory liquidity requirements set forth in section 11 of the Bank Act, 12 U.S.C. 1431(g), and section III of the Finance Board's Financial Management Policy (FMP), or an inability to service the interest and principal payments due on the consolidated obligations in which it was a participating FHLBank as a "non-performing FHLBank." The proposed rule would require each FHLBank to submit quarterly certifications to the Finance Board regarding the consolidated obligations in which the FHLBank is a participating FHLBank. Each participating FHLBank must certify quarterly that it will not suffer a net loss, will remain in compliance with the statutory and regulatory liquidity requirements set forth in section 11 of the Bank Act, 12 U.S.C. 1431(g), and the FMP, and will remain capable of satisfying all consolidated obligation payments due in the next quarter. The proposed rule further provides that any participating FHLBank that cannot so certify shall file a consolidated obligation payment plan with the Finance Board specifying the measures the FHLBank will undertake to fully and timely meet its payment obligations. The proposed rule would require a non-performing FHLBank to refrain from incurring non-essential expenses, paying dividends or redeeming stock until its plan has been approved by the Finance Board or all of its consolidated obligation payment obligations for the quarter have been satisfied. The proposed rule would require a non-performing FHLBank to apply all of its assets to meet its consolidated obligation payments. Furthermore, the proposed rule would codify the authority of the Finance Board to

<sup>5</sup> The following definitions apply to the leverage limit provisions: "(b) 'Consolidated bonds' means bonds or notes issued on behalf of all [FHL]Banks. (c) 'Senior bonds' means consolidated bonds issued pursuant to 12 U.S.C. 1431 and this part and not defeased, other than bonds specifically subordinated to any then outstanding consolidated bonds. (d) 'Unsecured, senior liabilities' means all obligations of the Banks recognized as a liability under Generally Accepted Accounting Principles, except (1) Liabilities that are covered by a perfected security interest; (2) Consolidated bonds; (3) Bonds issued pursuant to 12 U.S.C. 1431(a); and (4) Allowances for losses for off-balance sheet obligations." 12 CFR 910.0(b)-(d).

<sup>6</sup> See 12 CFR 910.1(c). "The [FHL]Banks shall at all times maintain assets of the following types, free from any lien or pledge, in a total amount at least equal to the amount of senior bonds outstanding: (1) Cash; (2) Obligations of or fully guaranteed by the United States; (3) Secured advances; (4) Mortgages as to which one or more [FHL]Banks have any guaranty or insurance, or commitment therefore, by the United States or any agency thereof; (5) Investments described in section 16(a) of the Bank Act, as amended (12 U.S.C. 1436(a)); and (6) Other securities which have been assigned a rating or assessment by a major nationally recognized securities rating agency that is equivalent to or higher than the rating or assessment assigned by such agency or senior bonds outstanding. (Proviso omitted.)"

require any other FHLBank to make any such payment; and provide for any FHLBank making consolidated obligation payments on behalf of a non-performing FHLBank to receive reimbursement.

The proposed rule would add two new definitions to section 910.0—“Participating Federal Home Loan Bank,” and “Non-performing Federal Home Loan Bank.” The proposed rule would also add a new section 910.7. Section 910.7(a) would state the joint and several liability of the FHLBanks and the duty of the FHLBanks to give priority to consolidated obligation payments. Proposed section 910.7(b)(1) would require quarterly certification by each FHLBank to the Finance Board that the FHLBank will not suffer a net loss, will remain in compliance with the statutory and regulatory liquidity requirements set forth in section 11 of the Bank Act, 12 U.S.C. 1431(g), and the FMP, and will remain capable of servicing all of its consolidated obligation payments due during that quarter. Section (b)(2) would require a participating FHLBank to report immediately any projected net loss, inability to service its consolidated obligations, or any non-compliance with the statutory and regulatory liquidity requirements. The proposed rule in section (b)(3) would codify the authority of the Finance Board to require a FHLBank to file a report pursuant to section (b)(2) under certain circumstances. Under section (c) of the proposed rule any FHLBank projecting or experiencing an inability to service its current consolidated obligations would be required to submit a consolidated obligation payment plan to the Finance Board and would be required to refrain from incurring non-essential operating expenses, declaring or paying dividends, or redeeming any stock, until its consolidated obligation payment plan is approved by the Finance Board and its consolidated obligation payment obligations are satisfied. In the remote event that any participating FHLBank would be unable, due to actual or projected cash flow or balance sheet deficiencies, to service such consolidated obligations, section (d) of the proposed rule provides that the Finance Board would order one or more other FHLBanks to make such payments. The non-performing FHLBank would be liable to those other FHLBanks for reimbursement. The Finance Board would look to the assets of the non-performing FHLBank for reimbursement of such payments.

Under section (e) of the proposed rule, the reallocation of the payment obligations among the other FHLBanks

would be based on the pro rata participation of each FHLBank in all consolidated obligations outstanding as of the most recent month end for which the Finance Board has data. The reallocation (as opposed to payments that may be ordered by the Finance Board) would occur only after the non-performing FHLBank had applied all of its assets to service any consolidated obligation. Finally, section (f) of the proposed rule codifies the authority of the Finance Board to act if the inability of any FHLBank to service its consolidated obligations cannot be cured promptly.

#### IV. Regulatory Flexibility Act

The proposed rule applies only to the FHLBanks, which do not come within the meaning of “small entities,” as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

#### V. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 350, *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

#### List of Subjects in 12 CFR Part 910

Consolidated bonds and debentures, Federal home loan banks, Securities.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR part 910 as follows:

#### PART 910—CONSOLIDATED BONDS AND DEBENTURES

1. Revised the authority citation for part 910 to read as follows:

**Authority:** 12 U.S.C. 1422a, 1422b and 1431.

2. Amend § 910.0 by adding paragraphs (e) and (f) to read as follows:

##### § 910.0 Definitions.

\* \* \* \* \*

(e) *Participating Federal Home Loan Bank* means the Federal Home Loan Bank or Banks that received proceeds from the sale of a consolidated obligation issued by the Board pursuant to section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431).

(f) *Non-Performing Federal Home Loan Bank* means any participating Federal Home Loan Bank that fails to certify pursuant to § 910.7(b)(1) of this

part that it is able to pay principal and interest payments when due, that fails to make such payments when due, that fails to file a plan with the Board to meet its obligations on consolidated obligations, that is required by the Board pursuant to § 910.7(b)(3) of this part to file a report, or that is determined by the Board to require assistance in meeting its obligations on consolidated obligations.

3. Add § 910.7 to read as follows:

#### § 910.7 Joint and several liability

(a) *In general.* (1) Each and every Federal Home Loan Bank, individually and collectively, has a duty to make full and timely payment of all principal and interest on consolidated obligations when due.

(2) Each and every Federal Home Loan Bank individually and collectively shall ensure that the timely payment of principal and interest on all consolidated obligations is given priority over, and is paid in full in advance of any payment to or redemption of shares from any shareholder, or any other creditor not entitled by law or contract to priority over or parity with the holder of consolidated obligations.

(b) *Certification and Reporting.* (1) Before the end of each calendar quarter, and before declaring or paying any dividend for that quarter, the President of each Federal Home Loan Bank shall certify in writing to the Finance Board that the Federal Home Loan Bank will not suffer a net loss, will remain in compliance with the statutory and regulatory liquidity requirements set forth in section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(g)), and the Board's Financial Management Policy, and will remain capable of making full and timely payment of all interest and principal payments on consolidated obligations coming due during the upcoming quarter, in which such Federal Home Loan Bank is a participating Federal Home Loan Bank (as defined in § 910.0(e) of this part).

(2) A Federal Home Loan Bank shall report immediately to the Board if at any time:

(i) The Federal Home Loan Bank is unable to provide the certification required in paragraph (b)(1) of this section;

(ii) Subsequent to providing the certification required in paragraph (b)(1) of this section, the Federal Home Loan Bank projects that it will incur a net loss, fail to comply with statutory and regulatory liquidity requirements, or will be unable to timely and fully service consolidated obligations in which the Federal Home Loan Bank is

a participating Federal Home Loan Bank due during the quarter;

(iii) The Federal Home Loan Bank actually incurs a net loss, fails to comply with statutory and regulatory liquidity requirements, or will be unable to timely and fully service consolidated obligations in which the Federal Home Loan Bank is a participating Federal Home Loan Bank due during the quarter.

(iv) The report shall be accompanied by the consolidated obligation payment plan referenced in paragraph (c) of this section.

(3) If at any time the Board has reason to believe that a Federal Home Loan Bank will incur a net loss, cease to be in compliance with the statutory and regulatory liquidity requirements, or will lack the capacity to timely and fully service its consolidated obligations, the Board may require such Federal Home Loan Bank to file a report pursuant to paragraph (b)(2) of this section.

(c) *Consolidated obligation payment plans.* (1) If a participating Federal Home Loan Bank becomes a non-performing Federal Home Loan Bank (as defined in § 910.0(f) of this part) as a result of failing to provide the certification required in paragraph (b)(1) of this section, that Federal Home Loan Bank shall, prior to the beginning of the quarter in which the shortfall is estimated to occur, submit a "consolidated obligation payment plan." A consolidated obligation payment plan shall specify the measures the non-performing Federal Home Loan Bank will undertake to make full and timely payments of all principal and interest consolidated obligation payments due during the quarter.

(2) A Federal Home Loan Bank submitting a report pursuant to paragraphs (b)(2) or (b)(3) of this section, shall at the same time submit a consolidated obligation payment plan as described in paragraph (c)(1) of this section.

(3) A non-performing Federal Home Loan Bank shall refrain from incurring any non-essential expenses, from declaring or paying dividends, and from redeeming any capital stock, until such time as the Board has approved the Federal Home Loan Bank's consolidated obligation payment plan or ordered another remedy, and all of the non-performing Federal Home Loan Bank's consolidated obligation payments have been brought current.

(d) *Board payment orders.* (1) The Board, in its discretion, may order any Federal Home Loan Bank to make any principal or interest payment due on any consolidated obligation.

(2) To the extent that a Federal Home Loan Bank is ordered by the Board to make, or otherwise by agreement makes, any payment on any consolidated obligation in excess of its obligations as a participating Federal Home Loan Bank, the Federal Home Loan Bank shall be entitled to reimbursement from the non-performing Federal Home Loan Bank (which shall have a corresponding obligation to reimburse the Federal Home Loan Bank providing assistance) to the extent of such payment and other associated costs, including reasonable interest.

(e) *Adjustment of equities.* (1) Any non-performing Federal Home Loan Bank shall apply its assets to fulfill its consolidated obligations payment obligations, which shall include reimbursement (including reasonable interest) to any Federal Home Loan Bank that has made payments on behalf of the non-performing Federal Home Loan Bank, whether by agreement with the non-performing Federal Home Loan Bank or by order of the Board.

(2) If the assets of a non-performing Federal Home Loan Bank are insufficient to satisfy all consolidated obligation payment obligations set forth in paragraph (e)(1) of this section, then the Board shall allocate the outstanding liability among the remaining Federal Home Loan Banks on a pro rata basis in proportion to each Federal Home Loan Bank's participation in all consolidated obligations outstanding as of the end of the most recent month for which the Board has data.

(f) *Reservation of authority.* Nothing in this section shall affect the Board's ability to take such enforcement or other action against any Federal Home Loan Bank pursuant to the Board's authority under the Federal Home Loan Bank Act or otherwise to supervise the Federal Home Loan Banks and ensure that they are operated in a safe and sound manner.

Dated: January 27, 1999.

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

**Bruce A. Morrison,**  
Chairman.

[FR Doc. 99-3407 Filed 2-10-99; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 98-AGL-79]

#### Proposed Establishment of Class E Airspace; Waverly, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Waverly, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 07, a GPS SIAP to Rwy 25, and a Nondirectional Beacon (NDB) SIAP to Rwy 25, have been developed for Pike County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to create controlled airspace at Pike County Airport to accommodate the approaches.

**DATES:** Comments must be received on or before March 31, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 98-AGL-79, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments