in § 2608.201, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand or request is being reviewed, and seek a stay of the demand or request pending a final determination.

§ 2608.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay the demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). A written response may be offered to a request, or to a demand, if permitted by the court or other competent authority.

Subpart C—Schedule of Fees

§ 2608.301 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to OGE.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by OGE in its Freedom of Information Act and Ethics in Government Act fee regulations at 5 CFR part 2604, subparts E and G.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees.* You must pay witness fees for current OGE employees and any records certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former OGE employees, you must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Certification (authentication) of copies of records.* The Office of Government Ethics may certify that records are true copies in order to facilitate their use as evidence. If you seek certification, you must request certified copies from OGE at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of $15.00 for each document certified.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

Subpart D—Penalties

§ 2608.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by OGE or as ordered by a Federal court after OGE has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former OGE employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OGE employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action.

[FR Doc. 02–12552 Filed 5–20–02; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 966

[No. 2002–19]

RIN 3069–AB10

Federal Home Loan Bank Consolidated Obligations—Definition of the Term ''Non-Mortgage Assets''

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on Federal Home Loan Bank (Bank) consolidated obligations in order to redefine the term ''non-mortgage assets,'' as used in the provision on Bank leverage limits. The effect of this amendment would be to allow a Bank to qualify more easily to maintain a 25-to-1 assets-to-capital leverage ratio instead of the general 21-to-1 ratio. In addition, the rule makes several technical changes to the definition of ''non-mortgage assets.''

EFFECTIVE DATE: This rule will become effective on June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Acting Director, Office of Policy, Research and Analysis (202) 408–2991; Charlotte A. Reid, Special Counsel, Office of General Counsel (202) 408–2510; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 2002, the Finance Board published for notice and comment a proposed rule to amend § 966.3(a) of the Finance Board's regulations, which sets forth the assets-to-capital leverage limit that will apply to each Bank until: (1) That Bank's capital structure plan required under part 933 of the regulations becomes effective; and (2) the Bank is in compliance with the new leverage limit set forth in § 932.2 of the regulations.[1] Under § 966.3(a)(1), each Bank generally is required to maintain a leverage ratio not in excess of 21-to-1. However, § 966.3(a)(2) provides that a Bank may maintain a leverage ratio of up to 25-to-1 if the amount of its ''non-mortgage assets'' (after deducting deposits and capital held by the Bank) does not exceed 11 percent of the Bank's total assets. Thus, this rule is in a transitory stage because as the Banks' capital plans are approved and implemented, this leverage requirement will yield to the new leverage limit in § 932.2 of the Finance Board regulations.

Under § 966.3(a)(2), ''non-mortgage assets'' are defined to include a Bank's total assets after deduction of core mission activity (CMA) assets described in § 940.3 of the regulations and assets described in sections II.B.8 through II.B.11 of the Federal Home Loan Bank System Financial Management Policy

[1] See 12 CFR 931.9(b)(1) (governing transition from old to new leverage limit; see also 66 FR 8262, 8280 (Jan. 30, 2001) (transition discussed in preamble to rule adopting new capital regulations).

(FMP),[2] which include: mortgage-backed securities (MBS) or collateralized mortgage obligations (CMOs) issued by U.S. government-sponsored enterprises; AAA-rated MBS or CMOs issued by private entities; AAA-rated asset-backed securities backed by manufactured housing loans or home equity loans; and certain obligations of state and local housing finance agencies rated AA or higher.

While serving as a vehicle to transition the Banks from this leverage requirement to their new capital structures and the new leverage limit set forth in § 932.2 of the Finance Board regulations, the final rule amends § 966.3(a)(2) to: (1) Exclude from the scope of the definition of ''non-mortgage assets'' United States government-insured single family and multifamily mortgages acquired by Banks as part of their acquired member asset (AMA) programs established under part 955 of the regulations; and (2) clarify the definition by eliminating the CMA and FMP cross-references and replacing them with direct descriptions of the assets in question. This clarification will provide the Banks with an unambiguous standard for assets that are to be excluded from the definition of non-mortgage assets in leverage limit calculations.

The Finance Board received four comment letters, all of which were favorable comments, on the proposed rule. The comments are discussed below. Accordingly, the final rule adopts the proposed rule with only one clarification as discussed below.

II. Analysis of Comment Letters and Changes Made in the Final Rule

The Finance Board received four comment letters from Banks. All of the commenters supported the rule change. Two commenters suggested that the list of excluded assets contain certain additional items. Additionally, one commenter recommended that the Finance Board add a provision to codify a Finance Board regulatory interpretation (2001–RI–02) that the Banks may, at their option, calculate the non-mortgage asset ratio on a monthly average. Upon consideration of the comments, the Finance Board has determined that, with one exception, the recommendations would not substantively improve the rule, especially in light of the transitional nature of the rule. Ultimately, of course, the issue is best served by the Banks' new capital structures. In the unlikely event that a question arises in the interim concerning whether an asset may be excluded from the definition of non-mortgage assets, the Finance Board believes that the analysis may best be undertaken on a case-by-case basis.

One Bank requested that the definition of the government-insured or -guaranteed loans be broadened to include government insured or guaranteed multi-family residential mortgage loans in the list of excluded assets. The Finance Board agrees with the comment that all government-insured (or guaranteed) residential mortgage loans—single family and multi-family—should be excluded from non-mortgage assets, and has amended the final rule to reflect that change. As proposed, the final rule also amends § 966.3(a)(2) to eliminate any cross-reference to CMA assets and in its place adds ''acquired member assets, including all United States government-insured or guaranteed whole single-family and multi-family residential mortgage loans'' to the list of assets to be subtracted from a Bank's total assets to obtain the amount of ''non-mortgage assets'' on a Bank's balance sheet for purposes of the leverage limit calculation under this rule.

In addition to the above-described revision, as proposed, the final rule also eliminates the reference in § 966.3(a)(2) to ''assets described in sections II.B.8 through II.B.11 of the FMP'' and replaces that reference with an explicit enumeration of the assets to be subtracted from a Bank's total assets in calculating the percentage of non-mortgage assets. By including all relevant information in the published regulatory text, the definition of non-mortgage assets is made clearer and more transparent, without any substantive change.

The Finance Board received several recommendations for additions to the enumerated list of excluded assets. One Bank requested that standby bond purchase agreements for state housing finance agency bonds be excluded from non-mortgage assets, stating that to do so would be consistent with the exclusion of standby letters of credit. The Finance Board has considered the suggestion and determined that the rule should not be amended to include such contracts. Such bonds may be counted as mortgage assets for purposes of this rule only at such time as the purchase is executed.

Another Bank requested that the accrued interest carried on a Bank's books with respect to assets enumerated in § 966.3(a)(2) be added to that list as a stand-alone category of excluded assets. Upon consideration, the Finance Board rejects this suggestion. While accrued interest may be related to an asset, it is shown as a separate line item on a balance sheet. Once an interest payment is made it is removed from the balance sheet and flows through the income statement. An outstanding interest payment due is not the equivalent of a Bank advancing funds to a member. Thus, the Finance Board has determined that the interest due is not a ''mortgage asset'' for purposes of the final rule. Additionally, the Finance Board is not persuaded that principal amounts carried as receivables on a balance sheet should be granted separate asset status for purposes of this rule.

The Bank also suggested that the list of excluded assets should be broadened to include any adjustments made to the book value of the asset categories stated in § 966.3(a)(2) resulting from the application of SFAS No. 133 under Generally Accepted Accounting Principles (GAAP), and the book value of derivative assets that hedge similar provisions embedded in advances, such as a cap on the floating rate of an advance. The commenter correctly noted that under SFAS No. 133 the Bank includes in the book value of assets hedged with derivatives any fair value gains or losses on those assets. The Finance Board does not believe that the rule should be amended to take such values into account. Nevertheless, the Finance Board has determined that a Bank may value an asset under GAAP, as appropriate, for purposes of this final rule.

Finally, one Bank suggested it would be beneficial to codify in the final rule the Finance Board's regulatory interpretation (2001-RI–02) that the Banks may, at their option, calculate the non-mortgage asset ratio on a monthly average basis. Again, the rule is a transitional provision with a limited shelf life. The Finance Board does not believe that amending the rule is necessary at this late stage in the transition process. Accordingly, the final rule does not incorporate the requested amendment.

As stated, the final rule is a transitional mechanism. In the interim, in the unlikely event that any of these issues arise, the Finance Board is prepared to address such matters on a case-by-case basis in a regulatory interpretation or other appropriate regulatory adjudication.

[2] The FMP is a Finance Board policy that governs Banks' investments and other issues of financial management. The policy currently is being phased out as the Banks transition to their new capital structures in compmliance with the Finance Board's new regulations on Bank capital. *See* 12 CFR parts 930–933.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, 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, *see id.* at 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *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 966

Federal home loan banks, Securities.

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

PART 966—CONSOLIDATED OBLIGATIONS

1. The authority citation for part 966 continues to read as follows:

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

2. Revise § 966.3(a)(2) to read as follows:

§ 966.3 Leverage limit and credit rating requirements.

(a) * * *

(2) The aggregate amount of assets of any Bank may be up to 25 times the total paid-in capital stock, retained earnings, and reserves of that Bank, provided that non-mortgage assets, after deducting the amount of deposits and capital, do not exceed 11 percent of such total assets. For the purposes of this section, the amount of non-mortgage assets equals total assets after deduction of:

(i) Advances;

(ii) Acquired member assets, including all United States government-insured or guaranteed whole single-family or multi-family residential mortgage loans;

(iii) Standby letters of credit;

(iv) Intermediary derivative contracts;

(v) Debt or equity investments:

(A) That primarily benefit households having a targeted income level, a significant proportion of which must benefit households with incomes at or below 80 percent of area median income, or areas targeted for redevelopment by local, state, tribal or Federal government (including Federal Empowerment Zones and Enterprise and Champion Communities), by providing or supporting one or more of the following activities:

(*1*) Housing;

(*2*) Economic development;

(*3*) Community services;

(*4*) Permanent jobs; or

(*5*) Area revitalization or stabilization;

(B) In the case of mortgage-or asset-backed securities, the acquisition of which would expand liquidity for loans that are not otherwise adequately provided by the private sector and do not have a readily available or well established secondary market; and

(C) That involve one or more members or housing associates in a manner, financial or otherwise, and to a degree to be determined by the Bank;

(vi) Investments in SBICs, where one or more members or housing associates of the Bank also make a material investment in the same activity;

(vii) SBIC debentures, the short term tranche of SBIC securities, or other debentures that are guaranteed by the Small Business Administration under title III of the Small Business Investment Act of 1958, as amended (15 U.S.C. 681 *et seq*);

(viii) Section 108 Interim Notes and Participation Certificates guaranteed by the Department of Housing and Urban Development under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308);

(ix) Investments and obligations issued or guaranteed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

(x) Securities representing an interest in pools of mortgages (MBS) issued, guaranteed, or fully insured by the Government National Mortgage Association (Ginnie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or the Federal National Mortgage Association (Fannie Mae), or Collateralized Mortgage Obligations (CMOs), including Real Estate Mortgage Investment Conduits (REMICs), backed by such securities;

(xi) Other MBS, CMOs, and REMICs rated in the highest rating category by a NRSRO;

(xii) Asset-backed securities collateralized by manufactured housing loans or home equity loans and rated in the highest rating category by a NRSRO; and

(xiii) Marketable direct obligations of state or local government units or agencies, rated in one of the two highest rating categories by a NRSRO, where the purchase of such obligations by a Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required to generate needed funding for housing or community development.

* * * * *

Dated: May 8, 2002.

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

John T. Korsmo,

Chairman.

[FR Doc. 02–12637 Filed 5–20–02; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM211; Special Conditions No. 25–200–SC]

Special Conditions: Airbus Industrie, Model A340–500/–600 Airplanes; Ground Loads and Conditions for Center Landing Gear With Four Wheels and Braking Capability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Industrie Model A340–500 and –600 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is associated with the landing gear, in the form of a four-wheeled center landing gear, installed under the fuselage, which functions like a main landing gear in all respects, including the ability to brake. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Backman, FAA, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2797; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1996, Airbus Industrie applied for an amendment to