Proposed Rules

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 966

[No. 2002–04]

RIN 3069–AB10

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

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend 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.''

DATES: The Finance Board will accept written comments on the proposed rule on or before April 8, 2002.

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

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Acting Director, Office of Policy, Research and Analysis (202) 408–2991; Eric M. Raudenbush, Senior Attorney-Advisor, Office of General Counsel (202) 408–2932; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Summary of the Rule

A. Background

Section 966.3(a) of the Finance Board's regulations 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. *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). 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.

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 (FMP),[1] 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. This proposed rule would amend § 966.3(a)(2) to: (1) Exclude from the scope of the definition of ''non-mortgage assets'' United States government-insured 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. The Finance Board welcomes comments regarding these regulatory changes.

[1] 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 compliance with the Finance Board's new regulations on Bank capital. *See* 12 CFR Parts 930–933.

B. Government-insured or -guaranteed mortgages

Section 940.3 of the regulations enumerates the Bank activities that qualify as CMA—*i.e.,* activities that the Finance Board has determined are most central to the fulfillment of the Banks' statutory mission and upon which the Banks must focus when preparing their strategic business plans as required by § 917.5 of the regulations. Under § 940.3(b), most AMA qualify as CMA. However, in order to provide incentive for Banks to focus upon the acquisition of conventional mortgages, in which market the Finance Board believes that the involvement of the Banks provides greater benefit, *see* 65 FR 43969, 43972 (July 17, 2000), § 940.3(b) provides that U.S. government-insured or -guaranteed mortgages acquired under commitments entered into after April 12, 2000 qualify as CMA only in an amount up to 33 percent of total AMA acquired after that date, less U.S. government-insured or -guaranteed mortgages acquired after April 12, 2000 under commitments entered into on or before April 12, 2000. Any government-insured or -guaranteed mortgages held by a Bank in excess of this benchmark do not qualify as CMA and therefore are ''non-mortgage assets'' for purposes of the calculation to be made under § 966.3(a)(2).

Notwithstanding its efforts to focus the Banks upon conventional—as opposed to government-insured or -guaranteed—AMA, the Finance Board has consistently favored Bank investment in markets (including those for all types of AMA) in which Bank participation is likely to have a measurable positive impact over investment in MBS. *See* 65 FR 43969, 43971–72 (July 17, 2000) (explaining Finance Board preference for AMA over MBS). Thus, most AMA qualify as CMA, while no MBS qualify as CMA (except to the extent that a particular MBS investment qualifies under the ''targeted investment'' language of § 940.3(e)) and each Bank's investment in MBS is limited to 300 percent of that Bank's capital. *See* FMP at II.C.2.

In light of the emphasis that the Finance Board has asked the Banks to place upon AMA, as opposed to MBS, it is counterintuitive to designate all MBS for favorable treatment in making the leverage limit calculation, while denying such favorable treatment to a category of AMA. Accordingly, the

Finance Board is proposing to amend § 966.3(a)(2) to add ''acquired member assets, including all United States government-insured or guaranteed whole single-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.

C. Elimination of Cross-References

In addition to the above-described revision, this proposed rule also would eliminate the reference in § 966.3(a)(2) to ''core mission activity assets'' and ''assets described in sections II.B.8 through II.B.11 of the FMP'' and replace them with an explicit enumeration of the assets in question. The FMP is being gradually phased-out and will no longer govern Bank operations once all Banks are in compliance with the Finance Board's new capital regulations. As such, the Finance Board finds it prudent to begin eliminating regulatory references to this policy (except in the case of transition provisions) so that all relevant information can be found in the published regulatory text. Although the Finance Board has revised some of the language used in the FMP to describe these assets so as to conform to the conventions used in its regulations, no substantive change is intended.

In the same vein, the Finance Board also is proposing to eliminate the cross-reference to CMA assets and, instead, substitute an explicit enumeration of all of the other assets that are to be subtracted from a Bank's total assets in calculating the percentage of non-mortgage assets. With the inclusion of government-insured or -guaranteed mortgages—which do not qualify as CMA—in the list of items to be subtracted from total assets to derive the amount of a Bank's non-mortgage assets, the Finance Board believes that it is not appropriate to tie § 966.3(a)(2) to the CMA definition. In addition, this change would make the definition of non-mortgage assets clearer and more transparent.

II. Regulatory Flexibility Act

The proposed 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 proposed rule will not have a significant economic impact on a substantial number of small entities.

III. Paperwork Reduction Act

The proposed 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 proposes to amend 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. Amend § 966.3 by revising paragraph (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 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: February 13, 2002.

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

John T. Korsmo,

Chairman.

[FR Doc. 02–5459 Filed 3–6–02; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 985

[No. 2002–06]

RIN 3069–AB15

Office of Finance Board of Directors Meetings

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing the minimum number of meetings that the board of directors of the Office of Finance must hold each year. The proposed rule would require at least six in-person meetings per year.

DATES: The Finance Board will consider written comments on the proposed rule that are received on or before April 8, 2002.

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

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Office of Policy, Research and Analysis, 202/408-2872, *sweeneyp@fhfb.gov,* or Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Office of Finance (OF) is a joint office of the Federal Home Loan Banks (Banks) under section 2B of the Federal Home Loan Bank Act (Act). 12 U.S.C. 1422b(b)(2). The principal function of the OF is to offer, issue, and service consolidated obligations (COs) on which the Banks are jointly and severally liable. *See* 12 U.S.C. 1431(c). Until recently, OF issued debt as agent for the Finance Board, which was the statutory issuer of the debt under section 11(c) of the Act. On June 7, 2000, the Finance Board authorized the Banks to issue COs under section 11(a) of the Act, 12 U.S.C. 1431(a), and authorized the OF to act as the agent of the Banks in issuing and servicing those COs. 65 FR 36290 (June 7, 2000). That regulatory action also broadened the OF's functions, expanded the duties, responsibilities, and powers of the OF board of directors (OF board), and set a minimum number of annual board meetings, as discussed below. As part of that rulemaking, the Finance Board assigned to the OF (as part of its debt issuance function) the responsibility for preparing the combined Federal Home Loan Bank System (Bank System) annual and quarterly financial reports.[1] 12 CFR 985.3(b), 985.6(b). The Finance Board also required the OF to obtain annual independent audits, gave OF the exclusive authority to select the independent outside auditor for the combined financial statements, and mandated that the Banks provide the necessary financial information within timeframes set by the Finance Board or the OF. *See* 12 CFR part 989.

Under the existing rules, the OF board is responsible for the oversight of every aspect of the operations of the OF and has broad powers to carry out its responsibilities. *See generally* 12 CFR part 985. In executing these duties, the OF board is subject to many of the same regulations that apply to the boards of directors of the Banks. In particular, the Finance Board rules require the OF board to conform to certain governance standards that apply to the boards of directors of the Banks under part 917 of the Finance Board regulations. *See* 12 CFR 985.8. One effect of that rule is that certain provisions in part 917 that apply to the Banks have been made equally applicable to the OF board. Specifically, the OF board must adopt bylaws in accordance with the requirements of section 917.10, and must establish policies for the management and operation of the OF, and approve a strategic business plan, in accordance with section 917.5. *See* 12 CFR 985.8(a)(2), (d)(1), (2). The OF board also must review, adopt, and monitor annual operating and capital budgets, in accordance with section 917.8 of the Finance Board regulations, *see* 12 CFR 985.8(d)(3), and must establish and perform the duties of an audit committee consistent with the requirements of § 917.7 and applicable SEC regulations governing audit reports. *See* 12 CFR 985.8(d)(4).

To discharge these duties the Finance Board constituted the OF board with three part-time members, each of whom is appointed by the Finance Board. The OF board includes two Bank presidents and one private citizen member, the latter of whom serves as the chair. *See* 12 CFR 985.8(a). Section 985.8(b) of the Finance Board regulations currently requires the OF board to hold no fewer than nine meetings annually. When the Finance Board adopted this requirement in June 2000, it established a minimum meeting requirement for the OF board, which previously had been required to meet quarterly. Although this action was independent of the Finance Board's regulatory treatment of the Banks, it was consistent with the regulations applicable to the Banks, which at that time were required to hold a minimum of nine meetings each year.[2] Since that time, the Finance Board has reduced the minimum number of board meeting required of the Banks to no fewer than six in-person board meetings annually, which reflects the actual operations practices of the Banks. 12 CFR 918.7(a).

II. Analysis of Proposed Rule

The OF board has asked the Finance Board to reduce the minimum number of meetings for the OF board, noting that ''[t]he OF is a small organization whose business activities, while substantial in terms of debt issued, are largely routine in nature.'' The OF board also noted that its staff is experienced, and its operations are subject to periodic review by the examiners of the Finance Board, as well as by external auditors, and that the OF board has in place sufficient guidelines, policies, and procedures to monitor the day-to-day business affairs of the OF. Moreover, the OF board establishes the debt issuance parameters and ratifies debt issuance activity at regularly scheduled meetings, and the activities of the OF are closely monitored by various Bank officials through a variety of formal and ad hoc committees.

The OF board believes that it can continue to carry out its responsibilities while holding fewer meetings, without disruption of office functions or board

[1] Previously, the Finance Board was responsible for preparing those financial reports. As amended, § 985.6(b) also sets forth the standards under which the OF is required to prepare Bank System annual and quarterly financial reports. The rule requires that the scope, form and content of the disclosures in such financial reports be consistent with the requirements of the applicable Securities Exchange Commission's (SEC) regulations governing various disclosure requirements, and be presented in accordance with the Statement Of Financial Accounting Standards No. 131, ''Disclosures about Segments of an Enterprise and Related Information'' (FAS 131). The rule also requires that OF comply with the filing and distribution schedule applicable to corporate registrants under the Securities Exchange Act of 1934.

[2] *See* 65 FR 13663, 13664 (March 14, 2000), citing 64 FR 71275 (December 21, 1999).