

ords that have been given to it by the Financial Regulatory Agencies.

(c) *Procedure.* Upon a receipt of a request for a record that has been given to the Finance Board by a Financial Regulatory Agency, the Finance Board will promptly forward the request to the appropriate Financial Regulatory Agency and also will notify the requester of this action. No further action by Finance Board will be taken on the request.

§ 904.10 Service of process.

(a) *Service on agency.* Any legal process served on the Finance Board demanding access to its records under the FOIA shall be addressed to the Executive Secretary and may be served by mailing the process, by certified mail, postage prepaid, to the address shown in § 904.5(b)(1).

(b) *Advice for person served.* (1) This section applies to any person in possession of a Finance Board record that may not be disclosed under this part, regardless of whether such person is a Finance Board officer or employee.

(2) Any person who is served with a subpoena, order or other process requiring attendance as a witness or document production of a record in any proceeding shall:

(i) Promptly advise the General Counsel of the Finance Board of such service and of all relevant facts, including the record requested; and

(ii) Advise both the authority issuing the subpoena, and the attorney for the party seeking the record, of the substance of these regulations.

(c) *Appearance by person served.* Except where disclosure of the record has been authorized by the Board of Directors or law, any person, described in paragraph (b)(1) of this section, who is required to respond to a subpoena, shall attend the proceeding and respectfully decline to produce such record or give testimony with respect thereto, on the basis of this part. If the authority nevertheless orders the disclosure of the record or testimony, such person shall continue to respectfully decline to produce such record or testimony and shall promptly report the incident to the Finance Board.

By the Federal Housing Finance Board.
dated: December 28, 1991.

Michael F. Evans, Jr.,
Chairman.

[FR Doc. 91-31005 Filed 12-27-91; 8:45 am]
BILLING CODE 6725-01-4

12 CFR Part 906

[91-639]

Meetings of the Board of Directors of the Federal Housing Finance Board Under the Government in the Sunshine Act

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is subject to the Government in the Sunshine Act ("Sunshine Act"), and proposes to add to its regulations a new part on public information regarding meetings of its governing Board of Directors. These regulations will replace the provisions of the former Federal Home Loan Bank Board ("FHLBB") relating to public information on meetings of the Board of Directors used by the Finance Board to date.

These regulations are being added to give the public a greater awareness of the Finance Board's duties, responsibilities, and functions by enabling the public to observe meetings of its Board of Directors.

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73, 103 Stat. 183, enacted on August 9, 1989, abolished the FHLBB and established the Finance Board as an independent executive agency responsible for overseeing the Federal Home Loan Banks ("FHLBanks"). The Conference Report on FIRREA expressly provides that the Finance Board will be subject to the Sunshine Act (5 U.S.C. 552b). H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 424 (1989) reprinted in (1989) U.S. Code, Cong., & Ad. News 86, 463.

The FIRREA continued FHLBB regulations in effect until superseded by the appropriate successor. 103 Stat. 183, 357 (1989). Accordingly, the Board of Directors of the Finance Board has used the procedures in the former FHLBB Sunshine Act regulations until such time as new regulations are promulgated. On September 5, 1989, when the Finance Board established 12 CFR chapter IX (54

FR 36757), part 906 of its regulations was reserved for "Public Information Regarding Meetings of the Federal Housing Finance Board." These regulations now being proposed as part 906 will implement the Sunshine Act for the Finance Board.

Section 2 of the Sunshine Act states that its purpose is to provide the public the "fullest practical information regarding the decisionmaking processes of the Federal Government" while protecting legitimate individual privacy and "the ability of the Government to carry out its responsibilities." Pub. L. 94-409 sec. 2, 90 Stat. 1240-41 (1978) reprinted in 5 U.S.C. 552b note. The Sunshine Act does not clearly delineate when the public's right of observance gives way to an agency's need to carry out its administrative functions.

However, one United States Supreme Court case has drawn that line in favor of an agency's administrative needs over the public's right to observe meetings of its collegial governing body. In *FCC v. ITT World Communications Inc.*, 466 U.S. 463 (1984), the Supreme Court provided some guidance on this issue. That case holds that a gathering of members of an agency governing body and staff for background or generalized discussion of pending agency business is not a "meeting" within subsections 552b(a)(2) or (b) of the Sunshine Act. 466 U.S. at 469-72.

The proposed regulations include a provision enabling the Board of Directors to use an expedited process to close a meeting. The Sunshine Act makes this option available to an agency if a majority of its meetings may properly be closed to the public under 5 U.S.C. 552(c)(4), (8), (9)(A) or (10).

The Finance Board qualifies for the expedited closing process permitted in 5 U.S.C. 552b(d)(4). The exclusive function of the Finance Board is to oversee the FHLBanks and the Financing Corporation ("FICO"). In that capacity it reviews the budgets of the FHLBanks and FICO, and authorizes sales of FHLBank System consolidated bonds or FICO bonds. The Finance Board receives examination and operating reports on the FHLBanks and reviews audits of FICO.

Meetings of the Board of Directors involving the above mentioned issues may be closed to the public under 5 U.S.C. 552b(c)(4) (preventing disclosure of financial information that is privileged or confidential), (c)(8) (preventing disclosure of examination, operating or condition reports prepared for financial regulatory agencies) or (c)(9)(A) (preventing disclosure of information that would lead to

significant financial speculation in securities or might endanger the financial stability of a financial institution).

Accordingly, the Finance Board qualifies for use of the expedited closing process.

The Finance Board proposes to amend its regulations by adding a new part 906 to its general regulations.

Regulatory Flexibility Act

In accordance with section 605(b), title 5, United States Code, the Board of Directors of the Finance Board has determined, and hereby certifies, that the proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation focuses on the conduct of agency business before the Board of Directors but does not address any specific regulatory matter dealing with either the FHLBanks or the FICO, that might affect a small entity.

List of Subjects in 12 CFR Part 906

Sunshine Act.

Accordingly, part 906 is amended by revising the Part heading, and by adding the text, to read as follows:

PART 906—INFORMATION REGARDING MEETINGS OF THE BOARD OF DIRECTORS OF THE FEDERAL HOUSING FINANCE BOARD

Sec.

- 906.1 Purpose and scope.
- 906.2 Definitions.
- 906.3 Open meetings.
- 906.4 Closed meetings.
- 906.5 Procedures for closing meetings.
- 906.6 Notice of meetings.

Authority: 5 U.S.C. 552b; sec. 2B, 103 Stat. 412 (12 U.S.C. 1422b).

§ 906.1 Purpose and scope.

(a) This part is issued by the Federal Housing Finance Board pursuant to the requirements of the Government in the Sunshine Act (5 U.S.C. 552b). The Government in the Sunshine Act requires Federal agencies, headed by collegial bodies, to promulgate regulations to implement its provisions. The purpose of these regulations is to provide the public with the fullest practicable information regarding the decisionmaking processes of the Board of Directors of the Finance Board while protecting the privacy rights of individuals and the ability of the Board of Directors to carry out its responsibilities.

(b) The Board of Directors shall not jointly conduct or dispose of official Finance Board business other than in accordance with this part.

§ 906.2 Definitions.

For the purpose of this part:

Sunshine Act means the Government in the Sunshine Act.

Board of Directors means the five member governing Board of Directors of the Federal Housing Finance Board.

Board Director or *Director* means a member of the Board of Directors.

Chairperson means the Chairperson of the Board of Directors and includes the Acting Chairperson.

Executive Secretary means the Executive Secretary to the Board of Directors, and includes the Acting Secretary in the event the Executive Secretary position is vacant.

Finance Board means the Federal Housing Finance Board.

Meeting means any deliberations of three or more Directors of the Board of Directors, that determine or result in the joint conduct or disposition of official Finance Board business, but does not include:

- (1) Discussions to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be disclosed;
- (2) Discussions to determine whether to schedule a meeting with less than seven days notice, or to change the time, place or subject matter of a scheduled meeting; and
- (3) Disposition of Finance Board business by circulation of written materials on proposed actions to individual Directors for proposed actions, and notational voting by the individual Directors on such proposed actions.

Public observation means the right of the general public to attend any open meetings of the Board of Directors, but does not include the right to participate therein unless invited to do so by the Chairperson.

§ 906.3 Open meetings.

(a) Except as provided in § 906.4, every portion of every meeting of the Board of Directors shall be open to public observation.

(b) Unless otherwise specified in the public notice, open meetings of the Board of Directors shall be held in the Board Room of the Finance Board at 1777 F Street, NW., Washington, DC, at the time specified in the public notice.

§ 906.4 Closed meetings.

(a) The Board of Directors may close a meeting, or portion thereof, to public observation, or withhold information from the public pertaining to a meeting, when it determines that opening the meeting, or a portion thereof, or the public disclosure of information

pertaining to such meeting, or portion thereof, is likely to:

- (1) Disclose matters that are:
 - (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and
 - (ii) In fact properly classified pursuant to such Executive Order;
- (2) Relate solely to the internal personnel rules and practices of the Finance Board;
- (3) Disclose matters specifically exempt from disclosure by statute (other than the Freedom of Information Act (5 U.S.C. 552)), *Provided* That such statute:
 - (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
 - (ii) Establishes particular criteria for withholding matters from the public or refers to particular types of matters to be withheld;
- (4) Disclose trade secrets or commercial or financial information that is obtained from a person and is privileged or confidential;
- (5) Involve accusing any person of a crime, or formally censuring any person;
- (6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:
 - (i) Interfere with enforcement proceedings;
 - (ii) Deprive a person of a right to a fair trial or an impartial adjudication;
 - (iii) Constitute an unwarranted invasion of personal privacy;
 - (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;
 - (v) Disclose investigative technique and procedures; or
 - (vi) Endanger the life or physical safety of law enforcement personnel;
- (8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Finance Board or another agency responsible for the regulation or supervision of FHLBanks or other financial institutions.

(9) Disclose information the premature disclosure of which would be likely to:

(i) (A) Lead to significant financial speculation in currencies, securities, or commodities;

(B) Significantly endanger the stability of any of the FHLBanks or any other financial institution; or

(ii) Significantly frustrate implementation of a proposed Finance Board action, except that this paragraph shall not apply in any instance where the Finance Board has already disclosed to the public the content or nature of its proposed action, or where the Finance Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena by the Board of Directors, or the Finance Board's participation in a civil action on proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) A meeting or portions of a meeting shall not be closed nor information withheld pursuant to paragraph (a) of this section if the Board of Directors finds that the public interest requires otherwise.

§ 906.5 Procedures for closing meetings.

(a) *Regular procedures.* (1) Except as provided in paragraph (b) of this section, a meeting of the Board of Directors, or portion thereof, will be closed to public observation, and information pertaining to such meeting, or portion thereof, will be withheld from the public, when a majority of the Board of Directors determines by recorded vote that such meeting, or portion thereof, or the withholding of information qualifies for exemption under § 906.4 and the Board of Directors does not find that the public interest requires otherwise.

(2) Except as provided in paragraph (a)(3) of this section, a separate vote of the Board Directors will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to paragraph (a) of this section.

(3) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting in such series involves the same particular

matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(4) The vote of each Board Director taken pursuant to paragraph (a) of this section shall be recorded, and no proxies shall be allowed.

(5) Whenever any person's interests may be directly affected by any portion of a meeting for any of the reasons referred to in paragraphs (a) (5), (6), or (7) of § 906.4, such person may send a written request to the Executive Secretary asking that such portion of the meeting be closed to public observation. The Executive Secretary will transmit the request to each Board Director and upon the request of a Director, a recorded vote will be taken of the Board of Directors whether to close the meeting to public observation.

(6)(i) Within one day of any vote taken pursuant to paragraph (a) of this section, the Finance Board will make publicly available through the Executive Secretary a written copy of such vote reflecting the vote of each Board Director.

(ii) If a meeting or portion thereof is to be closed to public observation, the Finance Board within one day of the vote taken pursuant to paragraph (a) of this section will make publicly available through the Executive Secretary a full, written explanation of its action, together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under paragraph (a) of § 906.4.

(7) Any person may request in writing to the Executive Secretary that an announced closed meeting, or portion thereof, be open to public observation. The Executive Secretary will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors on whether to open the meeting to public observation.

(b) *Expedited procedures.* (1) Since a majority of the meetings of the Board of Directors may be closed pursuant to paragraphs (a) (4), (8), (9)(i) or (10) of § 906.4, subsection (d)(4) of the Act (5 U.S.C. 552b(d)(4)) allows the Finance Board to use expedited procedures in closing meetings of the Board of Directors under these four paragraphs of § 906.4. The following are examples of meetings of the Board of Directors, or portions thereof, that may be closed to the public under these expedited procedures: sale of FHLBank consolidated bonds or notes; sale of Financing Corporation bonds; review of

examinations, operating or condition reports of FHLBanks.

(2) A decision to close a meeting, or portion thereof, under paragraph (b) of this section shall be made at the beginning of the meeting, or portion thereof, by majority vote of the Directors.

(3)(i) The Finance Board shall maintain a record of each of the votes taken by its Board of Directors to close a meeting, or portion thereof, or to withhold public access to information thereof, under paragraph (b) of this section.

(ii) A copy of such record, reflecting the vote of each Board Director on the question of closing a meeting, or portion thereof, or withholding public access to information thereof, under this paragraph (b) of this section, shall be made available to any member of the public upon request to the Executive Secretary.

(4) Public announcement of the time, place and subject matter of meetings, or portions thereof, closed under this paragraph (b) of this section shall be made at the earliest practical time.

(c) *Records of closed proceedings—*(1) *Transcripts or electronic recording.* Except as provided in paragraph (c)(2) of this section, the Finance Board shall make and maintain a complete transcript or verbatim electronic recording of the proceedings at each meeting, or portion thereof, closed to public observation under paragraphs (a) or (b) of this section.

(2) *Minutes.* The Finance Board may make and maintain a set of complete minutes, in lieu of such transcript or electronic recording, with respect to meetings, or portions thereof, closed or information withheld under paragraphs (a)(8), (9)(i) or (10) of § 906.4. Such set of minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Board Director on the question). All documents considered in connection with any action shall be identified in such set of minutes.

(3) *Availability of Records.* (i) The transcript, electronic recording or set of minutes of an item discussed, or of testimony received, at meeting, shall be made available promptly to the public through the Executive Secretary except in cases where the Board of Directors determines that the item or testimony contains information which may be withheld under § 906.4(a).

(ii) Copies of such transcript, electronic recording or set of minutes, showing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(iii) The Finance Board shall maintain a complete copy of the transcript, verbatim electronic recording or complete set of minutes of each meeting, or portion thereof closed to the public, for at least two years after such meeting, or until one year after the conclusion of any proceeding of the Board of Directors with respect to which the meeting or portion thereof was held, whichever occurs later.

(d) **Legal certification for closing meeting.** (1) For every meeting, or portion thereof, of the Board of Directors closed pursuant to paragraphs (a) or (b) of this section, the General Counsel (or in the General Counsel's absence or incapacity the senior legal officer available) shall publicly certify that the meeting or portion thereof may be closed to the public pursuant to the Sunshine Act and this part, and specifically state the relevant exemption in support thereof.

(2) A copy of the certification, together with a statement from the Chairperson or when appropriate, the Acting Chairperson or designee, setting forth the time and place of the meeting and the persons present, shall be retained in the permanent files of the Finance Board.

§ 906.6 Notice of meetings.

(a) **Scope of notice.** (1) Except as provided in paragraph (a) of § 906.4 that such information is determined to be exempt from disclosure, each open meeting of the Board of Directors, or each meeting closed under the regular procedures in paragraph (a) of § 906.5, will be preceded by public notice as described in this section.

(2) The notices for meetings of the Board of Directors closed under the expedited procedures pursuant to paragraph (b) of § 906.5 will be made in accordance with paragraph (b)(4) thereof.

(b) **Content of notice.** A notice of an open meeting or a meeting closed under the regular procedures in paragraph (a) of § 906.5 will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the Executive Secretary for information about the meeting. Each such notice shall be posted in the lobby of the Finance Board offices, and may be made available in addition by other means or at other locations as deemed desirable. Immediately following the posting of

each such notice, the Finance Board will publish the notice in the Federal Register.

(c) **Time—(1) Seven days notice.** Except as provided in paragraph (c)(2) of this section, a public notice of open meetings or meetings closed under paragraph (a) of § 906.5 will be made at least seven days in advance of each meeting.

(2) **Less than seven days notice.** When a majority of the Board of Directors determine by recorded vote that Finance Board business requires a meeting to be called at any earlier date, the seven-day prior notice rule shall be suspended and notice shall be made at the earliest practicable time.

(d) **Amendment of notice—(1) Time and place.** A change in the time or place of a meeting following public notice may be made only if announced at the earliest practicable time.

(2) **Subject matter.** A change in the subject matter of a meeting or a re-determination to open or close a meeting, or portions thereof, may be made after public notice only if:

(i) At least three Board Directors determine by recorded vote of the entire Board of Directors that Finance Board business so requires and that no earlier notice of the change was possible; and

(ii) The Finance Board publicly announces the change and the vote of each Board Director by posting a notice thereof in the lobby of the Finance Board offices at the earliest practicable time.

(3) **Timing of amendment.** A public announcement of a change in either the time, place or subject matter of a meeting may be made after the commencement of the meeting affected.

(4) **Publication of amendment.** Each change to a notice of a meeting will be published in the Federal Register, following the Finance Board's public announcement of the change.

By the Federal Housing Finance Board.
Dated: December 18, 1991.

Daniel F. Evans, Jr.,
Chairman.

[FR Doc. 91-31007 Filed 12-27-91; 8:45 am]
BILLING CODE 6725-01

12 CFR Part 909

[91-640]

Privacy Act Procedures

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposed to

adopt regulations implementing the Privacy Act (5 U.S.C. 552a).

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szentker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

The Privacy Act applies to records kept by a federal agency on an individual person. It protects individuals from an agency's disclosure of information in such records without the written permission of the individual in question. The Privacy Act requires each agency to maintain regulations implementing the provisions of the Act, 5 U.S.C. 552a(f)(1) & (2) (1988).

The Finance Board is subject to the Privacy Act. The definition of an "agency" in the Act incorporates the definition used in the Administrative Procedure Act, 5 U.S.C. 552a(a)(1) *incorp. by ref. id.* at 552(e). Since that definition of "agency" includes an independent regulatory agency, and since the Finance Board was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 as an independent executive agency (12 U.S.C. 1422a(a)(2) (Supp. I 1989)), the Finance Board is subject to the Privacy Act.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 stated that all former Federal Home Loan Bank Board (FHLBB) regulations continue in place until superseded. 103 Stat. 183, 357 (1989). These regulations will replace the former FHLBB Privacy Act regulations.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of title 5, United States Code, the Board of Directors of the Finance Board hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The regulation implements the Privacy Act, which is concerned with records of an agency containing information on individual persons only. The Privacy Act does not address business or corporate entities. Accordingly, a regulatory impact analysis of this regulation is not necessary or required.