

categorize each name and address as follows:

- (A) Accounting services;
- (B) Building support services;
- (C) Computer services;
- (D) Consulting services;
- (E) Legal services;
- (F) Office supplies and equipment.

(2) *Solicitation.* The Minority Contractors Advocate shall implement a procedure for soliciting potential candidates for the contractor file provided for in paragraph (c)(1) of this section, by means of any of the following:

- (i) Referrals from executive departments, agencies or instrumentalities of the Federal Government;
- (ii) Direct solicitation of selected candidates;
- (iii) Advertising by direct mail or publications specifically directed to minorities, or minority-owned entities;
- (iv) Sponsoring Finance Board seminars designed to explain the Minority Contractors Outreach Program to minority contractors or minority-owned entities who have the potential of contracting with the Finance Board;
- (v) Attendance at conventions, seminars or other professional conferences of minorities or minority-owned entities.

(3) *Certification.* (i) No minority contractor or minority-owned entity (whether solicited by the Minority Contractors Advocate or not) may participate in the Finance Board procurement process as a minority contractor or minority-owned entity unless certified as such by the Chairperson, or designee.

(ii) The certification shall be by a means and form approved by the Finance Board.

(iii) Nothing in this section shall be deemed to prevent a non-certified minority contractor or minority-owned entity from participating in the procurement process as a contractor or entity not designated or deemed a minority or minority-owned.

(4) *Promotion.* (i) The Minority Contractors Advocate shall maintain an ongoing campaign of promotion of the Minority Contractors Outreach Program with all certified minority contractors and minority-owned entities.

(ii) This campaign shall include:

(A) Ongoing promotion of the Minority Contractors Outreach Program with certified minority contractors and minority-owned entities;

(B) Alerting appropriate certified minority contractors and minority-owned entities when the Finance Board makes a solicitation for a bid or initiates

the negotiation of a procurement contract for goods or services;

(C) Acting as a liaison between the Finance Board contracting authorities and a particular minority contractor or minority-owned entity; and

(D) Assisting any certified minority contractor or minority-owned entity to understand Finance Board contracting procedures or other information regarding a particular bid or contract.

(iii) Nothing in this paragraph shall authorize the Minority Contractors Advocate to represent the interests of any minority contractor or minority-owned entity in any contract matter or bid before the Finance Board.

(5) *Contract award guidelines.*—(i) *Contracts not exceeding \$25,000.* The Finance Board Contracting Officer shall, from time to time, award contracts for the procurement of goods or services, that do not exceed \$25,000 in cost, to certified minority contractors or minority-owned entities listed in the contractor file provided for in paragraph (c)(1) of this section, to the extent not inconsistent with the principles of the Federal Government procurement process and the need of full and open competition. Such awards shall be made after consultation with the Minority Contractors Advocate.

(ii) *Contracts exceeding \$25,000.* Contracts for goods or services that exceed \$25,000 will be awarded strictly on the basis and principles of the Federal Government procurement process and the need for full and open competition. The Finance Board Contracting Officer and the Minority Contractors Advocate shall work to ensure, promote and facilitate the maximum participation of minority contractors or minority-owned entities in the Finance Board's procurement of goods or services in excess of \$25,000.

By the Federal Housing Finance Board.

Dated: December 18, 1991.

Daniel F. Evans, Jr.,
Chairman.

[FR Doc. 91-31006 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01

12 CFR Part 904

[91-642]

Freedom of Information Act Regulations

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to issue regulations governing procedures

for disclosure of information and records to the public pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. 552).

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 Szlenker, 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") amended the Federal Home Loan Bank Act ("Bank Act") to create the Finance Board as an independent executive agency responsible for regulating the Federal Home Loan Bank System. 12 U.S.C. 1422a(a)(2) (Supp. I 1989). As such, the Finance Board is required to adopt regulations implementing the FOIA and to publish a fee schedule. 5 U.S.C. 552(a)(4) (1988). These proposed regulations fulfill that mandate. The FOIA further stipulates that an agency's FOIA fees conform to guidelines promulgated by the Office of Management and Budget ("OMB"). *Id.* at 552(a)(4)(A)(i). Accordingly, the Finance Board's fee schedule for FOIA is based on the OMB guidelines. 52 FR 10012 (Mar. 27, 1987). In formulating the FOIA fees, the Finance Board was guided by the cost to the Finance Board of complying with a FOIA request for information and by the fee schedules adopted by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the Board of Governors of the Federal Reserve System.

The FIRREA continued the regulations of the former Federal Home Loan Bank Board in effect until superseded by the appropriate successor. 103 Stat. 183, 357 (1989). These new regulations will replace the former Federal Home Loan Bank Board's FOIA regulations.

Regulatory Flexibility Act

In accordance with section 605(b) of title 5, United States Code, the Board of Directors of the Finance Board hereby certifies that these proposed regulations will not have a significant impact on a substantial number of small entities. The Board reaches this conclusion because of (1) the very small number of FOIA requests handled by the Finance Board since its creation in August of 1989 and because (2) in most of those FOIA requests, the fee—if it had been

assessed—would have fallen within the free 100 pages or two search hours exceptions. Accordingly, an analysis of the regulatory flexibility issues is not necessary.

List of Subjects in 12 CFR Part 904

Freedom of information

Accordingly, the Finance Board hereby amends part 904 by revising the part heading, and by adding the text, to read as follows:

PART 904—AVAILABILITY AND CHARACTER OF RECORDS

Sec

- 904.1 Purpose and scope.
- 904.2 Definitions.
- 904.3 Published information.
- 904.4 Records available to public.
- 904.5 Procedure for requesting records.
- 904.6 Fees for records disclosed.
- 904.7 Records not disclosed.
- 904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.
- 904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.
- 904.10 Service of process.

Authority 5 U.S.C. 552, 12 U.S.C. 1422b(a)(1).

§ 904.1 Purpose and scope.

(a) This part implements section 552 of Title 5, United States Code, requiring the Federal Housing Finance Board to issue regulations informing the public of the places at which, the officers from whom, and the methods whereby the public may request records, and to set a uniform schedule of fees for obtaining records.

(b) Any action or determination required or permitted by this part to be performed by the Board of Directors, Executive Secretary or General Counsel may be delegated to another responsible Finance Board officer or employee specifically designated for that purpose.

§ 904.2 Definitions.

As used in this part:

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

Commercial use request means a request from, or on behalf of, a requester seeking information for a use or purpose that furthers the commercial, trade or profit interest of the requester or ultimate user.

Direct costs means the expenditures actually incurred by the Finance Board in searching for, duplicating (and in the case of commercial use requests, reviewing) records in response to a FOIA request, including the time spent by Finance Board employees performing

the work and the cost of operating duplicating equipment.

Duplication means the process of making a copy of a record necessary to respond to a FOIA request, including a paper copy, microform, audio-visual material, or magnetic tape or disc.

Educational institution means a public or private college preparatory school, college, university or similar accredited institution of professional or vocational education that operates a program or programs of scholarly research, or similar type of institution.

Executive Secretary means the Executive Secretary to the Board of Directors of the Federal Housing Finance Board.

Finance Board means the Federal Housing Finance Board.

Finance Board record or *record* means the rules, statements, opinions, orders, memoranda, interpretations, letters, reports, and other papers, or portions thereof, in the possession of the Finance Board, its governing Board of Directors or any Finance Board officer, employee or agent. The term also includes any information contained in such record.

Financial Regulatory Agency means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the National Credit Union Administration.

FOIA means the Freedom of Information Act.

Non-commercial scientific institution means a nonprofit institution operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

Representative of the news media means a requester, as defined in this section, actively gathering information about current events of interest to the public for a publishing or broadcasting entity.

Requester means any person, including an individual, firm, corporation, organization, or other entity, making a request to the Finance Board for a record or records.

Review means the process of examining records in response to a commercial use request to determine whether any portion thereof is permitted to be withheld, and includes processing any records for disclosure, such as redacting portions thereof, to ready them for disclosure to a requester. The term does not include the time spent by Finance Board staff resolving general legal or policy issues regarding the application of FOIA exemptions to the record.

Search means the time spent locating records in response to a request, including page-by-page or line-by-line identification of information requested within a record, performed by Finance Board staff manually or by computer using existing programming.

§ 904.3 Published information.

(a) *Federal Register*. As required by Sections 552 and 553 of Title 5 of the United States Code, the Finance Board publishes in the *Federal Register* for the guidance of the public:

- (1) A description of its organization;
- (2) Statements of the general course and methods by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- (3) Rules of procedure, descriptions of available forms and where they may be obtained, and instructions as to the scope and contents of all papers or reports;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board of Directors;

(5) Every amendment, revision, or repeal of the foregoing; and

(6) General notices of proposed rulemaking.

(b) *Annual Report*. The Finance Board submits an Annual Report to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1422b(d)). It is available to the public after its submission.

(c) *Other published information*. From time to time, the Finance Board issues statements to the press regarding particular dividend and credit actions, statements of policy, actions with respect to certain types of applications, and other matters.

(d) *Access to published information*. The publications referred to in paragraphs (b) and (c) of this section may be examined and, if available, copies may be obtained at the address set forth in § 904.5(b)(1).

§ 904.4 Records available to public.

(a) *General*. All Finance Board records are made available to any requester for inspection and duplication subject to the limitations stated in § 904.7 and § 904.9 of this part. The Finance Board may disclose a record to the public that is exempt from disclosure by section 552, Title 5, United States Code, or by § 904.7 of this part, where disclosure will not result in injury to a public or private interest intended to be protected by the FOIA or in a significant

rence with the statutory mission of the Finance Board or the national interest.

(b) *Available records.* Subject to § 904.7 of this part, the Finance Board makes available for inspection and copying:

- (1) All final opinions by the Finance Board;
- (2) Statements of policy and interpretations adopted by the Board of Directors not published in the Federal Register; and
- (3) Administrative manuals and instructions to staff that affect any member of the public. However, to the extent required to prevent a clearly unwarranted invasion of personal privacy, the Finance Board may delete identifying details in any material of the kinds above-described; in each such case the justification for such deletion will be fully explained in writing.

(c) *Votes of Board of Directors.* Subject to the provisions of § 904.7 of this part, a record of the final votes of each member of the Board of Directors in any proceeding is available for public inspection.

§ 904.5 Procedure for requesting records.

General. Requests for access to, or copies of, Finance Board records shall be in writing, and describe the information or records requested in a manner reasonably sufficient to identify them. The request shall state that it is being made pursuant to the FOIA, and shall state the full name and address of the requester. The request also may specify a dollar limit which the requester is willing to pay for the costs of searching, reviewing or duplicating—in which event the Finance Board will limit its search, review or duplication of the record to the dollar amount specified in the request.

(b) *Initial determination.* (1) All requests to access or copy Finance Board records shall be in writing and addressed to the Executive Secretary, at the Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

(2) If it is determined that a request does not reasonably describe the records sought, the Executive Secretary shall advise the requester that additional information is needed.

(3) The Executive Secretary shall forward any request for records made pursuant to this section to the appropriate Finance Board administrative unit with the custody of the requested record. Such unit will determine whether to grant or deny the request for records promptly after receipt from the Executive Secretary of a written request

for records that complies with paragraphs (a) and (b) of this section.

(4) All approvals or denials of requests for records under this part shall be in writing and signed by the Executive Secretary within ten days (except Saturdays, Sundays or Federal Government holidays) after receipt of the request by the Executive Secretary. Records will be disclosed after a party either pays the fees specified in § 904.6(1) or agrees to do so.

(5) All denials sent by the Executive Secretary to the requester shall:

- (i) State if the denial is in part or in whole;
- (ii) State the reasons therefor; and
- (iii) Inform the requester that the denial is not a final agency action and may be appealed under paragraph (c) of this section.

(c) *Appeal.* (1) A requester may appeal a denial of a request for records under paragraph (b) of this section by mailing an appeal to the Executive Secretary at the address set forth in paragraph (b)(1) of this section, within 30 days (except Saturdays, Sundays or Federal Government holidays) of the date of written notification of the denial.

(2) The appeal shall be by written application addressed to the members of the Board of Directors and shall state the grounds for the appeal.

(3) The Board of Directors, or its designee, shall determine whether to grant the appeal or uphold the initial determination within 20 days (excluding Saturdays, Sundays or Federal Government holidays) after receipt of the application by the Executive Secretary. If the initial determination is upheld, the Executive Secretary, on behalf of the Board of Directors, will notify the requester in writing of the decision and of the provisions for judicial review of the final action under 5 U.S.C. 552(a)(4).

(d) *Appeal during pendency of judicial review.* If a suit is brought in a United States district court under 5 U.S.C. 552(a)(4) after the Executive Secretary has denied a request for Finance Board records but before the Board of Directors has ruled on the appeal, the Board may at its option:

- (1) If an appeal has been made, continue to process the appeal; or
- (2) If an appeal has not been made, decide on its own to initiate an appeal.

(e) *Time computation.*—(1) *Agency.* For the Finance Board, the time limits in § 904.5(b)(4) and (c)(3) with respect to initial determinations or appeals shall begin as of the date on which a reasonably described, written request for records, or a written application on appeal, is actually received by the Executive Secretary.

(2) *Requester.* For a requester making an appeal, the time limits in § 904.5(c)(1) with respect to an appeal shall begin three days after an initial determination is post-marked.

(f) *Extension of time.* (1) The Executive Secretary may extend the time limits prescribed in § 904.5(b)(4) and (c)(3) for not more than ten working days by written notice to the requester, giving the reasons for the extension and a new date for the determination or appeal decision.

(2) Extensions may be granted for:

- (i) The need to search for and collect the requested records from establishments other than the Finance Board;
- (ii) The need to search, collect and examine a large amount of separate and distinct records demanded by a single request;
- (iii) The need to consult with another executive department or agency having substantial interest in the outcome of the request or appeal.

§ 904.6 Fees for records disclosed.

(a) *General statement.* In accordance with this section, the Finance Board shall recover the full allowable direct costs of providing copies of records pursuant to 5 U.S.C. 552. Accordingly, except as provided herein, the Finance Board shall assess fees for searching, reviewing and duplicating any record in accordance with the fee schedule herein. The fee schedule is based upon the category of requester and upon the services requested.

(b) *Categories of requesting parties.*—(1) *Designation.* The Finance Board shall categorize requesters based on the following five categories: (i) Commercial use requesters; (ii) educational institution requesters; (iii) non-commercial scientific institution requesters; (iv) representatives of the news media; and (v) all other requesters.

(2) *Limitations on fees charged.* The Finance Board shall assess fees pursuant to this section as follows:

(i) *Commercial use requesters.* Requesters making a commercial use request for a record shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at § 904.6(1). They are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational institution requesters.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. They may not be assessed fees for search or review.

(i) *Non-commercial scientific institution requesters.* Requesters in this category will be assessed in the same manner as educational institution requesters.

(iv) *Representatives of the news media.* Requesters in this category will be assessed in the same manner as educational institution requesters.

(v) *All other requesters.* Requesters for Finance Board records who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(c) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions thereof are withheld in full under an exemption that is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(d) *Additional copies.* The Finance Board will furnish one copy of any record. The allowance of 100 free pages of duplication under paragraphs (b)(2)(ii), (iii), (iv) and (v) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each additional copy.

(e) *Requests under other statutes—(1) Privacy Act.* Requests from individuals for records about themselves filed in a system of records maintained by the Finance Board will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(2) *Sunshine Act.* Requests for copies of transcripts or minutes, or for transcription of electronic recordings of Board of Directors meetings, or portions thereof, closed to the public will be treated under the fee provisions of the government in the Sunshine Act (5 U.S.C. 552b).

(f) *Charges for unsuccessful search.* Where applicable under this section, fees may be assessed for time spent searching, even if the Finance Board fails to locate the records or if located records are determined to be exempt from disclosure. By making an application for a request for Finance Board records, a requester agrees to pay such charges for unsuccessful searches by Finance Board staff.

(g) *Procedure for fee collection.* The Finance Board will collect fees for the direct costs of searching, reviewing, duplicating and related costs under the following procedures:

(1) *Agreement.* If after receiving a request for Finance Board records, the Executive Secretary estimates that the search, duplication or review costs of such request will exceed \$25.00 but not exceed \$250.00, the Executive Secretary will notify the requester to execute an agreement with the Finance Board to pay the final actual costs of the request. Notwithstanding any provision of this part, the Finance Board will not disclose any record prior to receiving the executed agreement.

(2) *Advance payment.* If after receiving a request for records, the Executive Secretary estimates that the search, review or duplication costs of such request will exceed \$250.00, the Executive Secretary will notify the requester to make an advance payment of the estimated amount prior to the disclosure of the requested records, when the Executive Secretary determines that the requester either has no prior history of payment of FOIA fees to the Finance Board or has previously failed to pay a FOIA fee in a timely fashion. For the purposes of this paragraph, "timely fashion" means a payment received by the Finance Board within 30 days following receipt of disclosed records by the requester. The Finance Board shall promptly remit any amount of an advance payment that exceeds the actual final cost of disclosing the requested records, and the requester shall be liable for any actual cost exceeding the estimate.

(3) *Interest.* Where the requesting party has executed an agreement to pay the fee for the FOIA request, the Finance Board will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Receipt of the fee by the Finance Board, even if not processed, will stay the accrual of interest. Interest is not chargeable for unpaid advance payments requested under this section.

(h) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the

assessment of fees, it may aggregate any such requests and charge accordingly.

(i) *Waiver or reduction of fee—(1) Collection and processing costs.* In its sole discretion, the Finance Board may opt to forego a fee for any costs of a request for records from any category if it determines that the routine costs of collection and processing of the fees are likely to equal or exceed the fee amount.

(2) *Public policy.* (i) The Finance Board will furnish documents without charge or at a reduced charge when it is determined that disclosure of the record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activity of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relationship of the records to Finance Board operations or activities;

(B) The informative value of the record to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's commercial interest, if any, in disclosure; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(iii) In making a request for a waiver or reduction of fees, a requester should include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The proposed use for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use or the release of the requested records; and

(D) If specialized use of a record is contemplated, a statement of the requester's qualification that are relevant to the specialized use.

(iv) The burden shall be on the requester to provide evidence or information in support of a waiver or reduction of fees.

(v) Determinations concerning waiver or reduction of fees shall be made by the Executive Secretary.

(vi) Appeals from such determinations shall be decided by the Director of the Office of Administration.

(j) *Fee payment method.* Fees assessed under this part will be delivered to the Executive Secretary by check or money order, payable to the "Federal Housing Finance Board."

(k) *FAX transmission.* The Executive Secretary and the requester may agree that any Finance Board records made available pursuant to a request under this part shall be made by facsimile transmission ("FAX"). The charge for a FAX transmission shall be the long distance charge on the telephone call, or .25 for a call within the metropolitan Washington area in addition to a .25 charge for use of the FAX apparatus.

(l) *Fee schedule.* Fees for searching, reviewing, duplicating, and providing Finance Board records under this section will be assessed in accordance with the following schedule:

Search (Manual):	
Supervisory/ Professional Staff.	\$16.00 per hour.
Clerical Staff.....	\$8.00 per hour.
Search (Computer):	
Operator.....	\$16.00 per hour.
Computer output (PC).....	\$6.00 per hour.
Computer output (Main-frame).	[Actual cost].
Review.....	\$16.00 per hour.
Duplication:	
Photocopy.....	10 per page.
Computer generated.....	.76 per 1000 lines.
Copy of microfiche.....	.30 per page.
Transcription of audio tape.	\$4.50 per page.
Certification with seal and attestation by Executive Secretary.	\$5.00 per document.
Address labels.....	\$8.00 per 1000 labels.

(m) *Other charges.* Complying with requests for special services associated with providing records (e.g. supplying special computer tabulations, or sending copies by express mail or messenger) is entirely at the Finance Board's discretion, and fees will be assessed to cover the actual costs of such services.

§ 904.7 Records not disclosed.

(a) *General.* Except as otherwise provided in this part, or as may be specifically authorized by the Board of Directors, Finance Board records not otherwise publicly available will not be disclosed to a requester if such records are:

(1) Authorized (i) under criteria established by an Executive order to be kept secret because of national defense or foreign policy, and (ii) in fact so classified pursuant to such order.

(2) Related solely to Finance Board

internal personnel rules and practices.

(3) Specifically exempted from disclosure by:

(i) A statute other than the FOIA if:

(A) It requires that the record be withheld from the public in such a manner as to leave no discretion to the Finance Board; or

(B) It establishes particular criteria for withholding or refers to particular types of records to be withheld; or

(ii) Section 22 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1442).

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a requester other than an agency in litigation with the Finance Board, including records of deliberation between the Board of Directors and staff.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution or a Federal Home Loan Bank which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of an individual.

(8) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of the Finance Board, a Financial

Regulatory Agency or a Federal Home Loan Bank.

(b) *Segregation.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt from disclosure under this section.

(c) *Prohibition against disclosure.* (1) Except as authorized by this part or otherwise by the Board of Directors, no Finance Board officer, employee, or agent shall disclose or permit disclosure of any unpublished Finance Board record to anyone (other than another officer, employee, or agent properly entitled to such information for the performance of official duties), whether by giving out or furnishing such record or a copy thereof or by allowing any person to inspect, examine or copy such record or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic, statistical or similar information or unpublished records regarding Finance Board interpretations of statutory or regulatory provisions may be disclosed, orally or in writing, by a Finance Board officer, employee or agent, subject, however, to the restrictions stated in this section.

(2) Notwithstanding any other provision in this part, no disclosure of a record will be made to a requester when the Executive Secretary determines that such requester has failed to make a timely payment of a fee charged for a previous request for records under § 904.6(g) until such time as such requester pays the full fee plus accrued interest to the Finance Board.

§ 904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.

The Director of the District Banks Directorate may disclose a report of examination of a Federal Home Loan Bank, or related record, to a Financial Regulatory Agency. Before disclosing such report, the Director shall make an affirmative determination that the requesting agency official is authorized to request the record on behalf of the agency and that the records are requested for a legitimate regulatory purpose and that the requesting agency has agreed not to disclose the contents of the record pursuant to the FOIA or the agency's regulations.

§ 904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.

(a) *Policy.* The Finance Board will not disclose information contained in

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

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 declined 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 18, 1991.

Ed F. Evans, Jr.,
Chairman.

[FF Doc. 91-31005 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01-M

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 Szlenker, 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 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